IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 05.09.2024

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THE HON'BLE Mr. JUSTICE KRISHNAN RAMASAMY

W.P.No.4488 of 2024 &
W.M.P.Nos.4841 of 2024 & 4843 of 2024

Mr.N.Periyasamy ... Petitioner

Vs.

1. The Commissioner of Income Tax,
   Income Tax Department,
   Trichy Main building,
   Williams Road,
   Cantonment Trichy,
   Tiruchirapalli-620015.

2. Assessing Officer,
   Ward-1, 2nd Floor,
   Perambalur Income Tax Office,
   No.71, Deena Dayalan Complex,
   1st Floor, Venkatesapuram,
   Perambalur-621212. ... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue Writ of Certiorari to call for the records of the 2nd Respondent in his impugned demand dated 07.12.2023 and to quash the same.

For Petitioner : Mr.S.Dayalan

For Respondent : Dr.B.Ramaswamy
Senior Standing Counsel

O R D E R

This writ petition has been filed by the petitioner challenging the order dated 07.12.2023 passed by the respondent and to quash the same.

2. The learned counsel for the petitioner submits that the petitioner is an agriculturist. He sold his ancestral agricultural land and purchased a house site out of the sale proceeds and deposited the remaining money in the bank. Thereafter, he filed his returns for the assessment year 2017-2018. While so, a notice was issued by the 2nd Respondent to the Petitioner on 08.03.2018, demanding tax, pursuant to which the Petitioner paid tax to the extent of Rs.26,160/-. Subsequently, the 2nd Respondent issued a notice under Section 142 (1) of the Income Tax Act, 1961 (in short 'the Act') on 30.09.2019, seeking production of certain documents and the same was also complied with. He further submitted that again the 2nd Respondent issued a notice on 26.12.2019 demanding Rs.13,61,239/- by invoking provision of Section 143 (3) of the Act, holding that the deposited amounts are not in accordance with law. Thereafter, the Petitioner preferred an Appeal before the 1st Respondent and pending the same, the 1st Respondent issued a notice dated 04.02.2020 calling for certain details from the Petitioner and the same was also complied with and that apart the Petitioner made a payment of Rs.73,000/- on 15.02.2020.

3. Further, he would submit that the 2nd Respondent again issued a demand notice under Section 143(3) of the Act on 07.08.2023, for which the petitioner made a representation to the 2nd Respondent in person, but without considering the same impugned order came to be passed directing the petitioner to pay the demand within 30 days and also directed the Petitioner to file an Appeal before the 1st Respondent by depositing 20% of demand. He therefore would submit that the when the Appeal was already filed and pending before the 2st Respondent, the aforesaid impugned order made by the 2nd Respondent is totally non application of mind and against the principles of natural justice and therefore seeks to set aside the same.

4. On the other hand, the learned senior standing counsel appearing for the Respondents would submit that in the impugned order the 2nd Respondent has clearly stated that if the Petitioner disagrees with the impugned order, he can file the rectification petition under Section 154 of the Act and also directed the Petitioner to pay 20% of demand, if the Appeal is pending. Therefore, the right course to be adopted by the Petitioner is to file a rectification petition under Section 154 of the Act, but without doing so, the Petitioner has approached this Court. He therefore prays for the dismissal of this Writ Petition.

5. Heard the learned counsel for the petitioner and the learned Senior Standing Counsel for the respondents and also perused the materials available on record.

6. A perusal of the impugned order reveals that the Petitioner is directed to file rectification petition under Section 154 of the Act, if he is so aggrieved and also to pay 20% of the demand in case the Appeal is pending before the authority. The relevant portion of the impugned order reads as under:

> "*If you disagree with the above demand and the demand is due to mismatch of TDS/Advance tax/Self assessment tax/other reason, you are requested to file a rectification u/s. 154 to his office along with the latest Form 26AS or copy of challan or other details. Pay 20% of demand if your case is pending before CIT (A). Your response should reach this office within 10 days from receipt of this letter. Your physical presence is not required and your co-operation very much appreciated.*"

7. In such view of the matter, as rightly contended by the learned Senior Standing Counsel appearing for the Respondents, the right course to be adopted by the Petitioner is to file a rectification petition under Section 154 of the Act. But without doing so, the Petitioner has approached this Court by way of this Writ Petition and therefore this Court is of the view that the

Writ Petition filed by the Petitioner is devoid of merits and the same is liable to be dismissed.

8. Accordingly, this Writ Petition stands dismissed with liberty to the Petitioner to file a rectification petition before the authority concerned under Section 154 of the Act, within a period of 30 days from the date of receipt of a copy of this order. No costs. Consequently, connected Miscellaneous Petitions are closed.

05.09.2024

Speaking/Non-speaking order
Index : Yes / No
Neutral Citation : Yes / No
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To

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