IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 28.10.2024

Coram

The Hon'ble Mr.Justice Krishnan Ramasamy

W.P.No.5606 of 2024
and
W.M.P.No.6197 of 2024

P.Kumaresan ...Petitioner

Vs.

1. Income Tax Officer,
   Non-corporate ward 17(1),
   Room No.515, 5th Floor,
   BSNL Building, BSNL Towers,
   16, Greams Road, Chennai 600 006.

2. National Faceless Assessment,
   Centre, Ministry of Finance,
   Delhi 110 003. ... Respondents

Prayer: This Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari, calling for records pertaining to the issue of the impugned assessment order dated 27.01.2024 for the assessment year 2015-16 relating to PAN:CBNPK3436N and all consequential demand raised u/s.156 of the Act on the file of the 2nd respondent and to quash the same.

For Petitioner : Mr.P.Madhavan

For Respondents : Dr.B.Ramaswamy
Senior Standing Counsel

ORDER

The present Writ Petition has been filed challenging the impugned assessment order dated 27.01.2024 passed by the second respondent relating to the assessment year 2015-2016, under the following two grounds, viz.,

> Firstly, the impugned assessment order is bared by limitation, since the same has been passed after expiry of the period of six years and
>
> Secondly, the impugned assessment order was passed quantifying the income of the petitioner at a sum of Rs.42,00,000/-, while the threshold limit was Rs.50,00,000/-.

2. The learned counsel for the petitioner would contend that notice was issued on 04.04.2022 under Section 148 of the Income Tax Act, 1961, which is beyond the statutory period since the three year time limit had expired on 31.3.2019 itself. He would further contend that the reason furnished by the 1st respondent in the notice, dated 21.03.2022 issued under Section 148A(b) of the Act and in the order made under Section 148A(d) of the Act dated

04.04.2022 reveal that the income quantified by the 1st respondent was more than the monetary limit of Rs.50,00,000/-, which is factually incorrect since it was subsequently rectified by the 2nd respondent himself by assessing the income of the petitioner at a sum of Rs.40,82,960/-, as such, the entire proceedings are liable to be quashed both on the ground of limitation as well as monetary limit.

3. Per contra, Dr.B.Ramaswamy, learned Senior Standing Counsel would submit that the petitioner's income is exceeded Rs.50,00,000/- at the time of issuing of the show cause notice, and therefore, the threshold should be taken for the purpose of issuing the show cause notice and not for final assessment order. Only in the final assessment order, the income was quantified as Rs.42,00,000/-. Therefore, the respondents are entitled to issue show cause notice and complete the assessment within a period of 10 years from the date of expiry of the assessment order. Further, he submitted that if at all the petitioner is aggrieved, the petitioner can very well file an appeal and work out his remedy in accordance with law.

4. Heard the learned counsel for the petitioner as well as the learned Senior Standing Counsel for the respondents and also perused the materials

available on record.

5. The following two challenges were made in the present writ petition:

a) Monetory limit

b) Limitation

6. As far as the Monetory limit is concerned, the petitioner's contention was that the assessment was made for a sum of Rs.42,00,000/-, whereas the notice under Section 148 of the IT Act was issued for more than Rs.50,00,000/-, i.e., for a sum of Rs.70,00,000/- and hence, the Authorities have no power to issue the said notice when the assessment amount was quantified only for a sum of Rs.42,00,000/-. However, this Court is unable to accept the contentions made by the petitioner for a simple reason that for issuing a notice under Section 148 of the Act, the amount quantified in the notice alone should be taken into consideration and it is not that the amount, which was finally assessed. In such case, at the time of issuance of show cause notice, it was issued for a sum of Rs.70,00,000/-. If the notice was issued for any amount below a sum of Rs.50,00,000/-, then certainly, the Authorities will not have any power to issue such notice. However, in the present case, the notice was issued

for a sum of Rs.70,00,000/-. Therefore, it is clear that the notice has been issued within the monetary limit.

7. As far as the limitation is concerned, in this case, the dispute is pertaining to the assessment year 2015-2016. Normally, as per the provisions of the IT Act, a notice under Section 148A can be issued for a period of 5 years. In such case, the respondent shall issue notice for the aforesaid assessment year till 30.03.2023. Thereafter, by virtue of amendment, the said period of 5 years was extended as 10 years. When such being the case, the question of limitation will not arise in this case and this Court does not find any merits in the submissions made by the petitioner that the show cause notice should be issued within a period of 3 years.

8. In the result, the Writ Petition is dismissed, granting liberty to the petitioner to file an appeal before the Appellate Authority within a period of thirty (30) days from the date of receipt of a copy of this order, where, the petitioner may raise all the issues, including the issue of limitation. On such appeal being filed by the petitioner as directed, the respondent shall consider the same on merits, without insisting upon the limitation aspect in filing of the appeal. No costs. Consequently, connected Miscellaneous Petition is closed.

28.10.2024

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

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<u>Krishnan Ramasamy,J.,</u>

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