IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 19.10.2024

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THE HON'BLE Mr. JUSTICE KRISHNAN RAMASAMY

W.P.Nos.8702 of 2022, 12914 of 2023 & 24554 of 2024
&W.M.P. Nos.8617, 8618 of 2022, 12699 &
12700 of 2023 & 26871, 26872 & 26875 of 2024

A.Sai Siva Jyothi ... Petitioner in all cases

Vs.

Principal Commissioner of Income Tax,
PCIT, Chennai-3,
410, Main Building – IV Floor,
Chennai Main Building,
No.121, Mahatma Gandhi Road,
Nungambakkam,
Chennai 600 034. ... Respondents in W.P. No.8702 of 2022

Income Tax Officer,
Non-Corporate Ward 10(6),
M.G.Road, Nungambakkam,
Chennai – 600 034. ... Respondents in W.P. Nos.12914 of 2023 & 24554 of 2024

Prayer in W.P. No.8702 of 2022: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari calling for the records of the respondents contained in its impugned order issued under Section 263 of the Income Tax Act, 1961 dated 29.03.2022, bearing ITBA/REV/F/REV5/2021-22-1042001306(1) for PAN:AEIPR67961 for assessment year (AY)

2012-13 and to quash the same as arbitrary, unjust and illegal.

Prayer in W.P. No.12914 of 2023: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari calling for the records of the respondents contained in its assessment bearing DIN:ITBA/AST/M/147/2022-23/1051668682(1) passed under Section 147 r/w Section 263 r/w Section 144 of the Income Tax Act, 1961 dated 30.03.2023 for PAN:AEIPR6796L, for AY 2012-13 and to quash the same as arbitrary, unjust and illegal.

Prayer in W.P. No.24554 of 2024: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus calling for the entire records of the respondents contained in the order dated 31.07.2024 bearing DIN& Letter No.ITBA/COM/F/17/2024-25/1067198446(1)and to quash the same as illegal, arbitrary, unreasonable and unjust and consequently to lift the attachment of bank accounts enforced through the notice issued under Section 226(3) dated 15.04.2024 bearing DIN & Letter No.ITBA/COM/F/17/2024-25/1064101667(1) and the notice issued under Section 226(3) dated 15.04.2024 bearing DIN & Letter No.ITBA/COM/F/17/2024-25/1064102155(1).

For Petitioner	:	Mr.Suhrith Parthasarathy
For Respondents	:	Mr.V.Mahalingam, Senior Standing Counsel and Ms.S.Premalatha, Junior Standing Counsel

COMMON ORDER

W.P. No.8702 of 2022 has been filed to issue a writ of certiorari calling for the records of the respondents contained in its impugned order issued under Section 263 of the Income Tax Act, 1961 dated 29.03.2022, bearing ITBA/REV/F/REV5/2021-22-1042001306(1) for PAN:AEIPR 67961 for the assessment year 2012-13 and to quash the same as arbitrary, unjust and illegal.

W.P. No.12914 of 2023 has been filed to issue a Writ of Certiorari calling for the records of the respondents contained in its assessment bearing DIN:ITBA/AST/M/147/2022-23/1051668682(1) passed under Section 147 r/w Section 263 r/w Section 144 of the Income Tax Act, 1961 dated 30.03.2023 for PAN:AEIPR6796L, for assessment year 2012-13 and to quash the same as arbitrary, unjust and illegal.

W.P. No.24554 of 2024 has been filed to issue a Writ of Certiorarified Mandamus calling for the entire records of the respondents contained in the order dated 31.07.2024 bearing DIN & Letter No.ITBA/COM/F/17/2024-25/1067198446(1) and to quash the same as illegal, arbitrary, unreasonable and unjust and consequently to lift the attachment of bank accounts enforced through the notice issued under Section 226(3) dated 15.04.2024 bearing DIN & Letter No.ITBA/COM/F/ 17/2024-25/1064101667(1) and the notice issued under Section 226(3) dated 15.04.2024 bearing DIN & Letter No.ITBA/COM/F/17/2024-25/1064102155(1).

2.The case of the petitioner is that the petitioner is the wife of one A.Ravi Shankar Prasad, who passed away on 11.07.2013. After five years of his death, a notice under Section 148 of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') dated 06.02.2018 was issued by the Income Tax Department in the name of her husband for the assessment year 2012-13. Upon receipt of the information from her that the above notice has been issued to a dead person, the Department dropped the proceedings. While so, on 12.03.2022, a notice was issued by the Principal Commissioner of Income Tax (PCIT) under Section 263 of the Act in the name of her husband. Thereafter, on 29.03.2022 the PCIT passed an order under Section 263 of the Act in the name of her husband setting aside the order made under Section 152(2) of the Act on 26.12.2019 and consequently directing the respondents to complete the reassessment initiated against her husband.

Since the very invocation of Section 263 of the Act was without jurisdiction, she filed the above W.P. No.8702 of 2022 before this Court seeking to quash the order dated 29.03.2022 passed by the PCIT and in which, an interim order was passed holding that the proceedings may go on by providing an opportunity of hearing to the petitioner and that any decision taken would be subject to the result of the above writ petition. While so, on 30.03.2023, an assessment order was passed under Section 147 r/w. Section 263 r/w. Section 144 of the Act adding a sum of Rs.338,42,95,000/- to the income of her husband.

3.It is the further case of the petitioner that since the very invocation of proceedings under Section 263 of the Act in the name of a dead person was without jurisdiction, the consequential assessment order dated 30.03.2023, which was passed in the name of her husband, was also without jurisdiction. Aggrieved by the said order, the petitioner has filed the above W.P. No.12914 of 2023 seeking to quash the above assessment order dated 30.03.2023. While so, the petitioner received two notices under Section 226(3) of the Act dated 15.04.2024 attaching two bank accounts of the petitioner with respect to the demands raised consequent to the assessment order passed on 30.03.2023. Aggrieved by the notices issued under Section 226(3) of the Act, the petitioner has filed W.P. Nos.11876 and 11879 of 2024 before this Court and this Court, by order dated 28.06.2024 disposed of those writ petitions directing the respondents to consider and dispose of the petitioner's representation. Thereafter, the petitioner issued a reply on 23.07.2024 stating the details of her husband's bank account and the amount held in the bank as on the date of his demise,to the letter dated 11.07.2024issued by the respondents calling for certain details related to her husband. While so, the respondents issued the above impugned order dated 31.07.2024 refusing to lift the attachment of the petitioner's bank accounts. Aggrieved by the same, the petitioner has filed the above W.P. No.24554 of 2024.

4.The learned counsel appearing for the petitioner submitted that the respondents initiated the proceedings under Section 148 of the Act against the husband of the petitioner, who is a dead person, for the assessment year 2012-13 and the same came to be closed by virtue of the order dated 26.12.2019. When the same was subjected to revision, a revision notice was issued on 29.03.2022 under Section 263 of the Act setting aside the order made under Section 152(2) of the Act on 26.12.2019 and consequently directing the respondents to complete the reassessment initiated against the petitioner's husband. Learned counsel for the petitioner submitted that since the very invocation of Section 263 of the Act was without jurisdiction, she filed the above writ petition before this Court in W.P. No.8702 of 2022 seeking to quash the order dated 29.03.2022 passed by the PCIT and in the said writ petition, an interim order was passed holding that the proceedings may go on by providing an opportunity of hearing to the petitioner and that any decision taken would be subject to the result of the above writ petition.

5.The learned counsel for the petitioner further submitted that on 30.03.2023, an assessment order was passed under Section 147 r/w. Section 263 r/w. Section 144 of the Act adding a sum of Rs.338,42,95,000/- to the income of the petitioner's husband and that since the very invocation of proceedings under Section 263 of the Act in the name of a dead person was itself passed without jurisdiction, the consequential assessment order dated 30.03.2023, which was passed in the name of her husband, was unsustainable. Therefore, the petitioner has filed the above W.P. No.12914 of 2023 seeking to quash the above assessment order dated 30.03.2023 and thereafter, the petitioner received two notices under Section 226(3) of the Act dated 15.04.2024 attaching two bank accounts of the petitioner with respect to the demands raised consequent to the assessment order passed on 30.03.2023. Aggrieved by the notices issued under Section 226(3) of the Act, the petitioner has filed W.P. Nos.11876 and 11879 of 2024 before this Court and this Court by order dated 28.06.2024 disposed of those writ petitions directing the respondents to consider and dispose of the petitioner's representation.

6.The learned counsel for the petitioner further submitted that on receipt of the letter dated 11.07.2024 issued by the respondents calling for certain details related to her husband, the petitioner issued a reply on 23.07.2024 stating the details of her husband's bank account and the amount held in the bank as on the date of his demise. While so, the respondents issued the above impugned order dated 31.07.2024 refusing to lift the attachment of the petitioner's bank accounts. Aggrieved by the same, the petitioner has filed the above W.P. No.24554 of 2024.

7.The learned counsel for the petitioner further submitted that when the petitioner's husband was declared as an insolvent by order dated 09.08.2017 in I.P. No.94 of 2011 and in the said I.P., the petitioner was also one of the legal heirs and that the Official Assignee has taken charge of the entire estate of the deceased/petitioner's husband under the provisions of the Presidency Towns Insolvency Act, 1909, the above notices issued against the dead person is non est in law. Therefore, the bank attachment cannot be proceeded with and that there is also a delay in passing the above assessment orders.

8.Per contra, the learned Standing Counsel appearing for the respondents submitted that in the present cases, the impugned assessment orders were passed in the name of the assessee, namely, the deceased, who is none other the husband of the petitioner. When the notice under Section 148 of the Act and the revision notice under Section 263 of the Act were issued by the respondents, the factum of death of the petitioner's husband was not brought into the knowledge of the respondents and therefore, there is no delay in passing the assessment order.

9.In reply, the learned counsel for the petitioner submitted that before passing such assessment orders, no such notice has been issued by the respondents. Apart from the above, the above notices cannot be issued against the petitioner for the simple reason that once the original assessee was died on 11.07.2013 and declared as an Insolvent as early as on 09.08.2017 and the assets were taken over by the Official Assignee, all the above proceedings can be initiated only against the Official Assignee and not against the petitioner. Therefore,the learned counsel for the petitioner prays for allowing these petitions by quashing the above impugned notices.

10.Heard the learned counsel for the petitioner and the learned Standing Counsel for the respondents and perused the documents available on records.

11.It could be seen from the records that after death of the petitioner's husband, a notice under Section 148 of the Income Tax Act, 1961 dated 06.02.2018 came to be issued by the Income Tax Department in the name of her husband for the assessment year 2012-13. Upon receipt of the information that the above notice has been issued to a dead person, the

Department dropped the proceedings. Again on 12.03.2022, a notice was issued by the Principal Commissioner of Income Tax under Section 263 of the Act in the name of her husband. Thereafter, on 29.03.2022, the PCIT passed an order under Section 263 of the Act setting aside the order made under Section 152(2) of the Act on 26.12.2019 and consequently directing the respondents to complete the reassessment initiated against her husband. Challenging the said notice,the petitioner filed W.P. No.8702 of 2022 before this Court seeking to quash the order dated 29.03.2022 passed by the PCIT and an interim order was passed by this Court holding that the proceedings may go on by providing an opportunity of hearing to the petitioner and that any decision taken would be subject to the result of the above writ petition. Thereafter, on 30.03.2023, an assessment order was passed under Section 147 r/w. Section 263 r/w. Section 144 of the Act adding a sum of Rs.338,42,95,000/- to the income of the petitioner's husband. Thereafter, an assessment order dated 30.03.2023 was passed in the name of her husband. Aggrieved by the said order, the petitioner has filed another writ petition in W.P. No.12914 of 2023 seeking to quash the above assessment order dated 30.03.2023. Subsequently, the petitioner received two notices under Section 226(3) of the Act dated 15.04.2024 attaching two bank accounts of the petitioner with respect to the demands raised consequent to the assessment order passed on 30.03.2023. Challenging the said notices, the petitioner has filed two writ petitions in W.P. Nos.11876 and 11879 of 2024 before this Court and this Court, by order dated 28.06.2024 disposed of the same by directing the respondents to consider and dispose of the petitioner's representation. Thereafter, the petitioner issued a reply on 23.07.2024 stating the details of her husband's bank account and the amount held in the bank as on the date of his demise, to the letter dated 11.07.2024 issued by the respondents calling for certain details, relating to her husband. Subsequently, the respondents issued the above impugned order dated 31.07.2024 refusing to lift the attachment of the petitioner's bank accounts. Challenging the same, the petitioner has filed the above writ petition in W.P. No.24554 of 2024.

12.When the original assessee passed away on 11.07.2013 and after his demise, he was declared as an insolvent by order dated 09.08.2017 in I.P. No.94 of 2011 and in which the petitioner was also one of the legal heirs and that the Official Assignee has taken charge of the entire estate of the original assessee, i.e. the deceased/petitioner's husband under the provisions of the

Presidency Towns Insolvency Act, 1909, issuing notices and assessment orders one after another to the petitioner in the name of the dead person, who is the original assessee, by the respondents are not sustainable. If at all there is any other claim against the original assessee, the respondents ought to have proceeded against the Official Assignee as per the relevant provisions since the original assessee was already declared as an Insolvent by this Court (Insolvency Court).

13.The learned Standing Counsel for the respondents submitted that some portion of the assets have also been transferred or mutated in the name of the petitioner or the other legal heirs and that notices were also issued against the other legal heirs of the deceased.

14.If that is the case of the respondents, the right course available to the respondents is to file a petition before this Court (Insolvency Court) to set aside the same and seek for a direction against the Official Assignee to take over the assets in accordance with law.

15.It is made clear that once the assets were taken over by the Official Assignee and the assessee was declared as an insolvent, the respondents can very well approach the Official Assignee for seeking their remedy. It is upto the Official Assignee to consider the claims and distribute the proceeds in accordance with law.

16.Accordingly, the impugned orders passed by the respondents are quashed and these writ petitions are allowed. No costs. Consequently, the connected miscellaneous petitions are closed.

19.10.2024

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Index : Yes/ No
Speaking Order : Yes/ No
NCC : Yes/ No
Note: Issue order copy on 25.10.2024

To

1.Principal Commissioner of Income Tax,
PCIT, Chennai-3,
410, Main Building – IV Floor,
Chennai Main Building,
No.121, Mahatma Gandhi Road,
Nungambakkam,

Chennai 600 034.

2. Income Tax Officer,
Non-Corporate Ward 10(6),
M.G.Road, Nungambakkam,
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KRISHNAN RAMASAMY,J.

vga

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