IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.11.2024

CORAM :

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.No.10305 of 2022
and
W.M.P.Nos.10016 and 10018 of 2022

B.Ravishankar ... Petitioner

Vs.

1.The Assistant Commissioner of Income Tax,
Income Tax Officer,
National Faceless Assessment Centre,
Delhi.

2.The Income Tax Officer,
Non Corporate Ward – 5,
Chennai – 600 034. ... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorari, to call for the records of the first respondent dated 30.03.2022 in DIN: ITBA/AST/S/143(3)/2021-2022/1042291031(1) for the Assessment Year 2015-2016 in PAN: ABHPR6510Q and quash the same.

For Petitioner : Mr.T.Vasudevan

For Respondents : Mr.V.Mahalingam
Senior Standing Counsel

ORDER

In this Writ Petition, the petitioner has challenged the Impugned Assessment Order dated 30.03.2022 passed by of the 1st respondent in DIN:ITBA/AST/S/143(3)/2021-2022/1042291031(1) under Section 143(3) read with Section 254 read with Section 144B of the Income Tax Act, 1961 for the Assessment Year 2015-2016.

2. The Impugned Assessment Order preceded a Show Cause Notice dated 12.03.2022 which was issued by the 1st respondent along with the Draft Order issued under Section 254 read with Section 144B of the Income Tax Act, 1961.

3. Earlier, an Assessment Order came to be passed by the 2nd respondent on 11.12.2017 under Section 143(3) of the Income Tax Act, 1961.

4. The petitioner had earlier challenged the aforesaid Show Cause Notice-cum-Draft Order dated 12.03.2022 issued under Section 254 read with Section 144B of the Income Tax Act, 1961 in W.P.No.7143 of 2022. Subsequently, the Impugned Assessment Order dated 30.03.2022 has been passed by the 1st respondent which has been impugned in this Writ Petition.

5. By an Order dated 30.08.2024, the said W.P.No.7143 of 2022 was dismissed in view of the Impugned Order dated 30.03.2022.

6. The case of the petitioner before this Court is that the petitioner's return of income along with computation of income for the Assessment Year 2015-2016 filed on 29.03.2016 was selected for a limited scrutiny in respect of customs duty payment mismatch.

7. However, midway several notices were issued which ultimately culminated in the Show Cause Notice dated 12.03.2022 which was impugned in W.P.No.7143 of 2022 and therefore, several new additions were made particularly with reference to addition for an amount of Rs.93,42,708/- being the unrecorded/unaccounted in the documents of account in the original assessment and also copy of the ledger account in respect of expenses towards Customs and Cost and Freight (C & F) Charges and in particular an amount of Rs.63,11,452/- which was remained unexplained in the Original Assessment Order dated 11.12.2017 passed under Section 143(3) of the Income Tax Act, 1961.

8. Learned counsel for the petitioner would submit that the proceedings initiated by the 1st respondent to include the above amounts has ultimately culminated in the Impugned Assessment Order dated 30.03.2022 was without jurisdiction as no permission or sanction was obtained from the Principal Commissioner of Income Tax / Commissioner of Income Tax concerned in accordance with Instruction No.7/2014 bearing F.No.225/229/2014-ITA.II dated 26.09.2014 and Instruction No.20/2015 bearing F.No.225/269/2015-ITA.II dated 29.12.2015 of the Central Board of Direct Taxes.

9. It is the further case of the petitioner on several occasions, the petitioner has questioned the jurisdiction of the respondents Department to expand the scope of limited scrutiny without a corresponding sanction / approval / permission from the Principal Commissioner of Income Tax / Commissioner of Income Tax in accordance with the above instructions of the Central Board of Direct Taxes.

10. It is therefore submitted that the Notice that was issued on 21.02.2022 under Section 142(1) of the Income Tax Act, 1961, expanding the

scope of inquiry to complete scrutiny contrary to the above Central Board of Direct Taxes Instructions was without jurisdiction. Subsequently, the Impugned Assessment Order dated 30.03.2022 passed by the 1st respondent was liable to be set aside.

11. On the other hand, the learned Senior Standing Counsel for the respondents would submit that the assessment (including the amounts) that was completed earlier on 11.12.2017 has been affirmed once again vide Impugned Assessment Order dated 30.03.2022 pursuant to Remand Order passed by the Income Tax Appellate Tribunal (ITAT), Chennai on 02.03.2021 in I.T.A.No.1743/Chny/2019.

12. Learned Senior Standing Counsel for the respondents would further submit that neither before the Commissioner of Appeals nor before the Income Tax Appellate Tribunal (ITAT) nor before the Impugned Assessment Order dated 30.03.2022 and the Assessment Order dated 11.12.2017 were passed, the issue relating to the jurisdiction was raised.

13. Specifically, the learned Senior Standing Counsel for the respondents would draw attention to the following paragraph from the Remand Order dated 02.03.2021, passed the Income Tax Appellate Tribunal (ITAT), Chennai:

> "3. When this appeal was taken up for hearing, the learned Counsel for the Assessee has submitted that the learned Commissioner of Income Tax (Appeals) has dismissed the appeal on the ground that the Assessee has not filed the books of accounts and the corresponding expenses incurred towards the customs and C & F charges and submitted that the Assessee being an uneducated person, hence may be given one more opportunity to substantiate his case before the Assessing Officer."

14. That apart, it is submitted that what has been affirmed is the amount in respect of which the Notice for limited scrutiny was issued to the petitioner on 02.08.2016 under Section 143(2) of the Income Tax Act, 1961.

15. I have considered the arguments advanced by the learned counsel for the petitioner and the learned Senior Standing Counsel for the respondents.

16. The arguments of the petitioner that the scope of inquiry in the assessment was expanded from the limited scrutiny to complete scrutiny

contrary to the above mentioned Instructions of the Central Board of Direct Taxes cannot be countenanced as the amounts which have been added are only the amounts required subject matter of the Notice issued to the petitioner for limited scrutiny under Section 143(2) of the Income Tax Act, 1961 on 02.08.2016.

17. In the said Notice dated 02.08.2016, it has been clearly stated that the issue relating to customs duty payment mismatch has been identified. A reading of the Impugned Assessment Order 30.03.2022 reveals that the additions that have been made are directly in connection with the customs duty payment mismatch which was subject matter of limited scrutiny Notice which has been issued under Section 143(2) of the Income Tax Act, 1961 on 02.08.2016.

18. Therefore, there is no merits to challenge the Impugned Assessment Order dated 30.03.2022 on the ground of jurisdiction. Therefore, this Writ Petition is liable to be dismissed.

19. Considering the fact that the petitioner has an alternate remedy, liberty is given to the petitioner to file a statutory appeal before the Appellate Authority under Section 246A of the Income Tax Act, 1961, within a period of 30 days from the date of receipt of a copy of this order.

20. This Writ Petition stands dismissed with the above liberty. No costs. Connected Writ Miscellaneous Petitions are closed.

19.11.2024

Index : Yes/No
Internet : Yes/No
Speaking Order/Non-Speaking Order
Neutral Citation : Yes/No

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To:

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Delhi.

2.The Income Tax Officer,
Non Corporate Ward – 5,
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C.SARAVANAN, J.

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