IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.04.2024

CORAM:

THE HONOURABLE MR. JUSTICE SENTHILKUMAR RAMAMOORTHY

W.P.No.9129 of 2024 and
W.M.P.Nos.10158, 10160, 10161 & 10163 of 2024

Manickam Malu Prasanna ...Petitioner

Vs.

1.The Assessment Unit,
Income Tax Department,
National e-Assessment Centre,
Delhi E-Ramp,
Jawaharlal Nehru Stadium,
Delhi-110 003.

2.The Income Tax Officer,
Ward 1, Pollachi,
Income Tax Department,
Venkatesa colony,
Pollachi 642 001.

3.The Principal Commissioner of Income Tax-1,
Coimbatore, Income Tax Commissioner,
No.63, Race Course Road,
Coimbatore – 641 018. ... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India to issue a Writ of Certiorari calling for the records of the petitioner on the file of the 1st respondent to quash the impugned order under Section 147 read with Section 144B of the Income Tax Act, 1961 dated 04.03.2024 in DIN:ITBA/AST/S/147/2023-2024/1061940422(1) for the Assessment Year 2018-2019.

For Petitioner : Mr.A.S.Sriraman

For Respondents : Dr.B.Ramaswamy,
Senior Standing Counsel

O R D E R

An assessment order dated 04.03.2024 for assessment year 2018-2019 is challenged in this writ petition.

2. The petitioner is an income tax assessee. In relation to the above mentioned assessment year, the petitioner had not filed income tax returns. Eventually, upon receipt of notice under Section 148 of the Income Tax Act, 1961 (the Income Tax Act), the petitioner filed the return of income on 27.06.2022. In proceedings pursuant thereto, the petitioner filed responses to notices received under Sections 143(2) and 142(1). The last response of the petitioner was filed on 15.02.2024 enclosing about 18 documents. The impugned assessment order was issued in the above facts and circumstances.

3. Learned counsel for the petitioner invited my attention to the last reply dated 15.02.2024 and pointed out that the petitioner had annexed multiple documents, including the annual return in Form GSTR 9, import bills, export bills, purchase ledger, bank account statements, etc. By adverting to the operative portion of the impugned order, learned counsel pointed out that findings were recorded that the assessee failed to submit export bills, purchase bills and confirmation of payment made to agriculturists although such information was provided as attachments to the above mentioned reply. He further submits that tax was imposed not only on deposits into the petitioner's bank account, but also on withdrawals therefrom. On the ground that the documents submitted by the petitioner were not taken into consideration while drawing up the assessment order, he seeks another opportunity.

4. Dr.B.Ramaswamy, learned senior standing counsel, accepts notice for the respondents. By referring to paragraph 2 of the impugned assessment order, he points out that multiple opportunities were provided to the petitioner and that the petitioner failed to respond to several notices. He also points out that the petitioner did not file his return of income for the relevant assessment period in spite of making

cash withdrawals of Rs.1,02,34,800/- and receiving large deposits during the said period. By drawing reference to the show cause notice dated 13.12.2023, learned senior standing counsel points out that the proposed variations were clearly indicated therein and it was pointed out that unexplained money of the total value of Rs.1,66,81,133/- was transacted through the petitioner's bank account. By further pointing out that a hearing was provided by video-conference, he submits that the petitioner only provided partial information and that the same is recorded in the table at paragraph 2. Therefore, learned senior standing counsel submits that no indulgence should be shown to the petitioner since principles of natural justice were adhered to.

5. At the outset, it should be noticed that the petitioner failed to file the return of income for assessment year 2018-2019. Even if the petitioner's income was below the prescribed threshold, a nil return should have been filed. The documents on record indicate that the return of income was filed after receipt of notice under Section 148 and documents were submitted by the petitioner thereafter from time to time. The last reply of the petitioner on 15.02.2024 contained about 18 attachments. As submitted by learned counsel for the petitioner, the

documents attached include import bills, export bills, GST annual return, purchase ledger, bank account statements and the like.

6. In the operative portion of the impugned order, in relevant part, it is recorded as under:

> *"A show cause notice u/s 144 of the Act was issued to the assessee on 04.10.2023 fixing the case for a hearing on 10.10.2023. In response to this show cause notice reply was received. The assessee also requested for Video Conference. Accordingly for the sake of natural justice requested to file reply during the discussion of Video conference by 16.02.2024. Substantial opportunities have already been provided to the assessee vide notices issued u/s 142(1) dated 11.08.2023 and 18.09.2023, 13.12.2023 fixing the case for a hearing on 19.12.2023 but the assessee failed to file completely full reply as required. In response to this final show cause notice replied but the assessee failed to submit export bill (air way bill) proof of custom clearance, remittance proof, copy of purchase bills, no confirmation of payment made to agriculturists, with name address and amount paid them was not received till date in response to their claim of cash deposit and huge withdrawals after*

providing adequate opportunities. Under the circumstances the assessment is made on the basis of material available on record and also on the basis of information available with the department on Insight Portal. The assessee failed to disclose the sources of cash deposit in SB Account for Rs.35,10,333/-, cash withdrawals of Rs.1,02,34,800/- in current and cash deposit in current account for Rs.29,36,000/- till date. Under the facts of the case cash deposited of Rs.1,66,81,133/- is taxed in the hands of the assessee u/s 69A of the Act read with section 115BBE of the Act. Penalty proceedings u/s 271AAC(1) is initiated for concealed the particulars of income as unexplained money u/s 69A of the Act amounting to Rs.1,66,81,133/-. Penalty proceedings u/s 272A(1)(d) is initiated for non-compliance of notices issued u/s 142(1) dated 11.08.2023 and 18.09.2023.

From the above extract, it follows that findings were recorded that the assessee failed to submit export bills, proof of customs clearance, remittance proof, copy of purchase bills and confirmation of payment made to agriculturists. Out of these, export bills were certainly attached with the petitioner's reply on 15.02.2024. As regards purchase bills, the purchase ledger and the GSTR annual returns were filed. It is likely that much of the information requested for would be contained in these documents. However, it should be recognised that the petitioner does not appear to have submitted all necessary documents. Nonetheless, since the documents submitted by the petitioner were not discussed and no reasons are recorded for confirming the proposed variations, the impugned order calls for interference. Besides, it should be noticed that tax was imposed not only on deposits but also on withdrawals.

7. For reasons set out above, the impugned order is set aside and the matter is remanded to the 1st respondent for reconsideration. The petitioner is permitted to submit any additional documents within a maximum period of 15 days from the date of receipt of a copy of this order. Upon receipt thereof, the 1st respondent is directed to provide a hearing through video-conference to the petitioner and issue a fresh assessment order within a maximum period of two months from the date of receipt of additional documents from the petitioner. It is made clear that the petitioner shall extend full co-operation in the remanded proceedings and ensure that the above mentioned time line is adhered to at any cost.

8. The writ petition is disposed of on the above terms. There will be no order as to costs. Consequently, connected miscellaneous petitions are closed.

05.04.2024

Index : Yes / No
Internet : Yes / No
Neutral Citation : Yes / No

kj

To

1.The Assessment Unit,
Income Tax Department,
National e-Assessment Centre,
Delhi E-Ramp,
Jawaharlal Nehru Stadium,
Delhi-110 003.

2.The Income Tax Officer,
Ward 1, Pollachi,
Income Tax Department,
Venkatesa colony,
Pollachi 642 001.

3.The Principal Commissioner of Income Tax-1,
Coimbatore, Income Tax Commissioner,
No.63, Race Course Road,
Coimbatore – 641 018.

SENTHILKUMAR RAMAMOORTHY,J.

Kj

W.P.No.9129 of 2024 and
W.M.P.Nos.10158, 10160, 10161 & 10163 of 2024

05.04.2024