IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 30.10.2024
Coram

The Honourable **Mr.Justice Krishnan Ramasamy**

W.P.No.10097 of 2024
and
W.M.P.Nos.11127, 11129, 11131 & 11135 of 2024

Krishnamurthy Mahalingam ...Petitioner

Vs.

The Additional/Joint/Deputy/Assistant Commissioner of Income Tax,
Income Tax Officer/ Assessing Officer,
National Faceless Assessment Centre,
2nd Floor, E-Ramp, Jawaharlal Stadium,
Delhi – 110 003. ...Respondent

Prayer :

Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus to call for records of the respondent leading to pass the impugned assessment order dated 23.03.2024 vide ITBA/AST/S/143(3)/2023-24/1063274245 (1) issued to the petitioner under Section 143 (3) read with Section 144B for the assessment year 2022-23 and the consequential notice of demand under Section 156 of the I.T.Act 1961 vide ITBA/AST/S/156/2023-24/1063274404(1) and penalty notice issued under Section 274 read with section 272(1) (d) dated 23.03.2024 vide ITBA/PNL/S/272A(1) (d) -FL /2023-24/1063273036(1) as illegal and to quash the same.

For Petitioner : Mr.R.V.Easwar Senior Counsel
for Mr.S.Prem Auxilian Raj

For Respondent : Mrs.S.Premalatha
Junior Standing Counsel

Order

The challenge in this Writ Petition is to the assessment order dated 23.03.2024 issued to the petitioner under Section 143 (3) read with Section 144B for the assessment year 2022-23 and the consequential notice of demand under Section 156 of the I.T.Act 1961 and penalty notice issued under Section 274 read with section 272(1) (d) dated 23.03.2024 and to quash the same.

2. Mr.R.V.Easwar, learned Senior Counsel for Mr.S.Prem Auxilian Raj, learned counsel for the petitioner would submit that initially, a notice under Section 141 (1) of the I.T.Act was issued by the respondent-Department, which was later followed by a notice under same Section dated 18.09.2023; that the petitioner, on receipt of the said notice dated 18.09.2023, filed a detailed reply on 19.10.2023. Further, it is submitted that after period of about 5 months, i.e. on 17.03.2024, a show cause notice-cum-Draft Assessment order was issued to the petitioner, requiring the petitioner to file their reply on 21.03.2024 and subsequently, the impugned assessment order dated 23.03.2024 came to be passed against the petitioner.

3. The learned Senior Counsel assailed the impugned order by contending that though the petitioner filed detailed reply dated 19.10.2023 in respect of the notice issued under Section 142(1), the respondent neither considered the said reply nor recorded any reasons for rejecting the said reply and has issued the show cause notice-cum-draft assessment order, providing only four days to file reply and passed the impugned assessment order, which is nothing but replica of the draft assessment order dated 17.03.2024. Thus, the learned Senior Counsel contended that the impugned orders is nothing but an outcome of total non application of mind and suffers from violation of principles of natural justice and liable to be aside, as the petitioner has not been heard before passing the same.

4. Mrs.S.Premalatha, the learned Junior Standing Counsel for the respondent submitted that the petitioner has filed his return of income for the

AY 2022-23 declaring the total income at Rs.1,23,26,240/-, however, the petitioner's case was selected for scrutiny under CASS for the reasons that substantial increase in capital in a year and high income reported in the returns and no entry in schedule assets and liabilities of return of income, and notice under Section 142 (1) was issued, calling upon the petitioner to file reply along with supporting documents, since the petitioner failed to submit the required documents called for, the respondent, in the absence of any explanation/details/evidence as to the amount of Rs.35,18,33,387/- introduced as capital by the petitioner, issued a notice dated 17.03.2024, to show cause as to why, the said amount should not be treated as 'cash credits' and added to the total income of the petitioner as per provision of Section 68 read with Section 115 BBE of the Act; that since the petitioner failed to respond to the said show cause notice, the impugned assessment order came to be passed, wherein, reply made by the petitioner was considered. Therefore, it is submitted that no interference is called for.

5. I have given due considerations to the submissions made on either side and perused the materials available on record.

6. The petitioner filed his income tax returns for the AY 2022-23 on 07.11.2022. However, the petitioner's case was selected for scrutiny and notice under Section 142 (1) dated 18.09.2023 was issued calling upon the petitioner's reply; that the petitioner, on receipt of such notice, filed a detailed reply dated 19.10.2023, along with supporting documents. Thereafter, the respondent after a period of five months, issued a show cause notice-cum- draft assessment order dated 17.03.2024, granting only four days, for filing reply; that since that the time granted for filing reply is not sufficient, the petitioner was not in a position to file reply, however, the respondent, without hearing the petitioner, proceeded to confirm the proposals contained in the show cause notice and passed the final assessment order.

6.1 Thus, as rightly contended by the learned Senior Counsel for the petitioner, the petitioner was granted only a short span of time for filing reply, i.e. four days, of which, only two days are working days, and at any costs, it does not merit on the aspect of providing due opportunity. As per the provisions of the Act, minimum 30 days' time ought to have been granted for filing reply, unless and until, sufficient time is granted to the petitioner, the petitioner, being a senior citizen will not be in position to file his reply in an effective manner.

6.2 Thus, the notice calling forth petitioner's reply to be filed within limited time cannot be deemed to a notice affording fair opportunity of hearing to the petitioner.

6.3 That apart, in the present case, petitioner's case was selected for scrutiny under CASS for the reasons that, "substantial increase in capital in a year and high income reported in the returns and no entry in schedule assets and liabilities of return of income". Though the petitioner filed a detailed reply dated 19.10.2023 along with all particulars as regards the source for increased capital income, the respondent, without considering the said reply, had issued the show cause notice dated 17.03.2024 and passed the impugned assessment order dated 23.03.202 mechanically without application of mind, that too, after a period of five months, by simply stating in clause 2.3.1 of the show cause notice and clause 3.4.2 of the impugned assessment order that the petitioner/assessee had failed to submit the required details called for during the assessment proceedings.

6.4 Further, on perusal of the impugned assessment order dated 23.03.2024, it is seen that the respondent-Department has merely extracted certain portions of the reply made by the petitioner dated 19.10.2023. In what way, the reply/objections made by the petitioner is not acceptable, in what manner, does the respondent is not disagreeable to the points raised by the petitioner in his reply, and how come the explanations/objections offered by the petitioner is not satisfactory has not been set out clearly by the respondent, rather, respondent has passed the impugned order, which is nothing but replica of the show cause notice and in para Nos.3.6, 3.7 and 3.8, the respondent has merely recorded the findings that "Not applicable' and finally, confirmed the proposals contained in the show cause notice dated 17.03.2024. Thus, it is clear that the respondent had not appreciated the reply/objections filed by the petitioner dated 19.10.2023 in a proper perspective, had the respondent has gone through the reply filed by the petitioner in a careful manner, they would have perhaps arrived at a right conclusion, in case of any clarification is required, the same would have been explained by the petitioner during the personal hearing.

7. In the light of the above narrated facts, this Court is of the view that the impugned orders are wholly untenable not only on the ground of total violation of principles of natural justice but also on other grounds, as rightly contended by the learned counsel for the petitioner. Though the learned Junior Standing Counsel for the respondent has raised strong objection for granting any order, which would succour the petitioner, however, considering the fact that she has not taken a definite stand as regards the contention advanced by the petitioner, which would per se show that he is partially admitting that there are certain discrepancies in the impugned order, and bearing in mind that the interests of both the assessee and the Revenue has to be safeguarded, is inclined to set aside the impugned orders.

8. Accordingly, the Writ Petition is allowed, impugned orders, viz., the assessment order dated 23.03.2024 and the consequential notice of demand and penalty notice dated 23.03.2024 are set aside and the matter is remanded to the respondent for fresh consideration. The petitioner is directed to file reply within a period of three weeks from the date of receipt of a cop of this order. Thereupon, the respondent is directed to afford an opportunity of personal hearing to the petitioner by issuing a 14 days clear notice, on which date, the petitioner shall appear along with documents documents in support of their claim, which shall be inclusive of the documents as sought for by the respondent-Department, and thereafter, the respondent shall peruse the documents and after conducting a full-fledged hearing, the respondent is directed to pass fresh orders, which shall be a speaking order touching upon all issues raised by the petitioner. No costs. Consequently, connected Writ Miscellaneous Petitions are closed.

30.10.2024

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Index : yes/no
Neutral Citation : yes/no

To

The Additional/Joint/Deputy/Assistant Commissioner of Income Tax,
Income Tax Officer/ Assessing Officer,
National Faceless Assessment Centre,
2nd Floor, E-Ramp, Jawaharlal Stadium,
Delhi – 110 003.

Krishnan Ramasamy,J.,

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