IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 10.09.2024

Coram

The Hon'ble Mr.Justice Krishnan Ramasamy

W.P.No.13536 of 2023
and
W.M.P.Nos.13211 & 13214 of 2023

Govindasamy Srinivasan ...Petitioner

Vs.

1. The Principal Commissioner of Income Tax,
   Coimbatore-1,
   Income Tax Department,
   No.67-A, Race Course Road,
   Coimbatore 641 018.
2. The Income Tax Officer,
   Ward- 1, Hosur,
   Income Tax Department,
   Maruthi Nagar, Hosur,
   Chennai- 635 109. ... Respondents

Prayer: This Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, to call for the records of the Writ Petitioner on the file of the First Respondent to quash the impugned order dated 23.03.2023 passed u/s 264 of the Act in DIN and order No.ITBA/REV/F/REV7/2022-23/1051167064(1) for the Assessment Year 2017-18 and consequently direct the First Respondent to complete the revision proceedings afresh for the assessment year 2017-18 after granting reasonable/sufficient opportunity of hearing.

For Petitioner : Mr.A.S.Sriraman

For Respondents : Dr.B.Ramaswamy
Senior Standing Counsel (Taxes)

ORDER

Challenging the impugned order, dated 23.03.2023 passed by the first respondent, the petitioner has filed the present Writ Petition.

2. The case of the petitioner is that the petitioner is from the agricultural background and his father is running a Tomato Commission Mundy under the name and style “Thirumala Thirupathi Tomato Commission Mundy” and for the purpose of business transactions viz., cash deposit and withdrawal, the petitioner's Bank account is used by his father. The second respondent issued notice/order dated 30.03.2021 under Section 148 of the Income Tax Act, 1961 for the Assessment year 2017-2018, followed with a show cause notice on 07.03.2022 and the re-assessment order came to be passed on 29.03.2022. Aggrieved by the said order, a revision petition was filed by the petitioner on 22.11.2022 in terms of the provisions under Section 264 of the Act before the first respondent, seeking revision of the notice/order dated 30.03.2021 for the Assessment Year 2017-2018, and the same was rejected by the first respondent

vide order dated 23.03.2023. Challenging the same, the petitioner has filed the present Writ Petition.

3. The learned counsel for the petitioner would submit that a notice dated 06.01.2023 was provided in the revision proceedings, seeking clarification with regard to the absence of appeal before the first appellate authority from the order sought to be revised in terms of Section 264 of the Act. Further, he submitted that an opportunity of personal hearing was fixed on 18.01.2023, and the only query posted at the time of personal hearing was whether an appeal was filed or not, and upon confirmation by the petitioner that no statutory appeal was filed, personal hearing was concluded, and the impugned order dated 23.03.2023 came to be passed by the first respondent. The main contention of the learned counsel for the petitioner is that the petitioner was not granted enough time to put forth his submission and the impugned order dated 23.03.2023, was passed in violation of principles of natural justice. Hence, he sought for appropriate orders from this Court for setting aside the impugned order dated 23.03.2023 passed by the first respondent.

4. Dr.B.Ramaswamy, learned Senior Standing Counsel appearing for the respondents strongly opposed the contention made by the learned counsel for the petitioner and submitted that it is not the case that the respondents have not provided the opportunity of personal hearing. In the present case, the first respondent has provided the opportunity of personal hearing and requested the petitioner to submit the written submission on or before 18.01.2023 along with that, the first respondent has requested to certify that no appeal was filed by the petitioner. Hence, he prayed for dismissal of the present Writ Petition.

5. 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.

6. Upon persual of the records, it shows that a notice dated 06.01.2023 was issued to the petitioner, to ascertain whether any statutory appeal was filed before the Commissioner of Income Tax (Appeals) by the petitioner or not. The date for personal hearing and for submitting the written submission was fixed on 18.01.2023. It appears that the first respondent has been informed about the filing of an appeal by the petitioner. Thus, the plea of

the petitioner that no sufficient opportunity of personal hearing was provided by the first respondent is not acceptable. But the fact remains that, after providing an opportunity of personal hearing, the present impugned order came to be passed by the first respondent. Taking into consideration the business activities of the petitioner and in the interest of natural justice, this Court is inclined to provide one more opportunity to the petitioner to substantiate his case.

7. Accordingly, this Court passes the following orders:-

(i) The order impugned herein is set aside and the matter is remanded to the first respondent for fresh consideration on condition that the petitioner shall pay a sum of Rs.500/- to the credit of **Cancer Institute (Regional Cancer Centre), Adyar, Chennai – 600 020**, within a period of two weeks from the date of receipt of a copy of this order; and the setting aside of the impugned order will take effect from the date of payment of the said amount.

(ii) Upon the production of a proof for the payment of the aforesaid amount, the first respondent is directed to issue a notice through RPAD by granting 14 days for personal hearing to the petitioner and thereafter, pass appropriate orders on merits and in accordance with law within a period of six months thereafter, after hearing the petitioner.

8. With the above directions, this Writ Petition is disposed of. There is no order as to costs. Consequently, the connected miscellaneous petitions are closed.

10.09.2024

Speaking/Non-speaking order
Index : Yes / No
Neutral Citation : Yes / No
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Krishnan Ramasamy,J.,

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