IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **10.06.2024**

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THE HONOURABLE **MR.JUSTICE SENTHILKUMAR RAMAMOORTHY**

**W.P.No.12925 of 2024**
**and W.M.P.Nos.14092, 14094, 14097, 14098, 14100 & 14101 of 2024**

Gopalakrishnan ... Petitioner

-vs-

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

2.The Deputy Commissioner of Income Tax
Non Corporate Ward 8(1), Chennai
Income Tax Department
No.121, Nungambakkam High Road,
Chennai 600 034.

3.The Principal Commissioner of Income Tax-Chennai
Income Tax Department
No.121, Nungambakkam High Road,
Chennai 600 034. ... Respondents

**PRAYER**: Writ Petition filed under Article 226 of the Constitution of India, pleased to issue a Writ of Certiorari, to call for the records of the writ petitioner on the file of the 1st respondent to quash the impugned order u/s 143(3) read with section 144B of the Income Tax Act, 1961 dated 21.03.2024 in DIN: ITBA/AST/S/143(3)/2023-24/1063100917(1) for the assessment year 2022-23.

For Petitioner : Mr.A.S.Sriraman

For Respondents : Mrs.S.Premalatha, Jr. SC

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**ORDER**

An assessment order dated 21.03.2024 pertaining to assessment year 2022-23 is challenged in this writ petition. The petitioner had filed the return of income for the above mentioned assessment year on 02.12.2022 declaring the total tax income of Rs.20,77,550/-. The first respondent issued notices both under Section 143(2) and 142(1) of the Income Tax Act, 1961 (the Income Tax Act) in relation to the petitioner's return of income. The petitioner responded thereto. Being dissatisfied with the petitioner's responses, show cause notice dated 09.03.2024 and additional show cause notice dated 11.03.2024 were issued proposing variations. The petitioner responded to the show cause notices on 12.03.2024 and 15.03.2024. The impugned assessment order was issued in these facts and circumstances on 21.03.2024.

2. Learned counsel for the petitioner invited my attention to the petitioner's responses to the show cause notices. As regards the first proposed variation in respect of commission earned by the petitioner, learned counsel submitted that the income accrued to the petitioner in the form of commission and that even if it were to be treated as income from business or profession, it is entirely revenue neutral. On

this aspect, learned counsel further contended that the impugned order is riddled with inconsistency and contradiction in as much as the assessing officer labelled the income as commission while discussing the second variation relating to dis-allowance of expenses. As regards such dis-allowance, learned counsel submitted that the expenses were incurred in relation to the services provided by the petitioner as a commission agent and, therefore, as per Section 37(1) of the Income Tax Act such expenses could not have been disallowed on the ground that the supplier of services did not pay GST. By referring to the reply to the show cause notices, learned counsel pointed out that the petitioner informed the assessing officer that all payments were made through bank channels after making deductions in accordance with law. As regards the applicability of Section 44AB relating to tax audit, learned counsel pointed out that the petitioner did not fall within the ambit of tax audit in as much as his gross receipts did not exceed the threshold of Rs.10 Crores. By turning to the impugned order, he pointed out that a conclusion was recorded that the assessee had not audited his accounts without considering the reply of the assessee. For all these reasons, he contends that the impugned order is vitiated.

3. Mrs.S.Premalatha, learned junior standing counsel, accepts notice for the respondents. By referring to the details of opportunities given, she contends that each reply of the petitioner is referred to therein. She also submits that the replies of the petitioner were fully extracted in the impugned order. As regards the disallowance of expenditure, she points out that expenses were disallowed because the petitioner failed to produce the relevant tax invoices. With regard to the unexplained credits, she referred to the tables at pages 118 and 119 of the typed set and pointed out that a sum of Rs.80,49,789/- was treated as unexplained credits on account of the same not being included in the income tax return. Therefore, she contends that the impugned order does not contain any infirmity.

4. Based on the rival submissions, the question that arises for consideration is whether the impugned order was issued after duly taking into consideration the material placed on record by the petitioner. As regards the commission receipts of the petitioner, there is no dispute that the amount disclosed was accepted by the assessing officer. The petitioner disclosed the amount as commission receipts and, therefore, income from other sources, whereas the assessing officer construed it as income from business or profession. In any event, since the declared income was accepted, it is revenue neutral.

5. As contended by learned counsel for the petitioner, it is noticeable that the assessing officer referred to the petitioner's receipts of Rs.2,53,56,950/- as commission while dealing with the second variation relating to expenses of Rs.2,33,09,380/-. In the petitioner's reply, the petitioner has pointed out that all payments

were made through bank channels after making requisite deductions and that these expenses cannot be disallowed in terms of Section 37(1) of the Income Tax Act. On examining the impugned assessment order, no findings are recorded with regard to such contention of the petitioner and the dis-allowance is entirely on the ground that the tax invoices of the supplier of services were not provided, thereby indicating that such supplier may not have paid GST. In these circumstances, the findings on this issue warrant re-consideration.

6. The next issue dealt with in the impugned order are the unexplained credits on Rs.80,49,789/-. On this issue, the petitioner annexed Appendix-I and Appendix-II to the reply dated 15.03.2024. In Appendix-II, the petitioner has provided customer wise details, including both credits and the corresponding debits. Any discussion thereon is conspicuous by its absence in the impugned assessment order. The last issue relates to whether the petitioner was liable to

audit his books of accounts in terms of Section 44AB. In the reply, the petitioner asserted that he is not liable for an audit since his turnover is below the threshold of Rs.10 Crores. Once again, there is no discussion on this contention and the assessing officer merely recorded that the assessee has not audited his accounts.

7. Thus, the impugned assessment order calls for interference in view of non consideration of the submissions and materials placed on record by the petitioner.

8. Therefore, impugned order dated 21.03.2024 is set aside and the matter is remanded for re-consideration. The first respondent is directed to provide a reasonable opportunity to the petitioner, including a personal hearing through video conference, and thereafter issue a fresh assessment order within ***three months*** from the date of receipt of a copy of this order.

9. W.P.No.12925 of 2024 is disposed of on the above terms. No costs. Consequently, W.M.P.Nos.14092, 14094, 14097, 14098, 14100 and 14101 of 2024 are closed.

**10.06.2024**

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

**To**

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**SENTHILKUMAR RAMAMOORTHY,J**

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