IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.06.2024

CORAM :

THE HONOURABLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

W.P.No.12451 of 2024
and
WMP.Nos.13600 & 13602 of 2024

Sri.Nachimuthu Valusamy,
Proprietor,
M/s. Top Light Labels,
Investments and wind Mills,
Top Light Buildings,
Palladam Road, Tirupur - 641 604.

.. Petitioner

Versus

The Assessment Unit,
Income Tax Department,
New Delhi. ..
Respondent

Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, calling for the records on the files of the respondent relating to the impugned Assessment order in DIN.ITBA/AST/S/143(3)2023-24/1063166802(1), dated 22.03.2024, U/s.143 (3) read with section 144B of the Income Tax Act, and the Demand Notice dated 22.03.2024 DIN and Notice No.ITBA/AST/S/156/2023-24/1063166997 (1) under Section 156 of the Income Tax Act, passed by the respondent and quash the same as being without jurisdiction, authority of law and contrary to the principles of natural justice.

For Petitioner : Mr.T.Ramesh

For Respondent : Dr.B.Ramaswamy
Senior Standing Counsel

ORDER

An assessment order dated 22.03.2024 is challenged on the ground of breach of principles of natural justice.

2. The petitioner asserts that the return of income for assessment year 2023-2024 was filed on 10.10.2022 declaring a total loss of Rs.5,51,804/-. Upon scrutiny of such return, the petitioner received notices both under section 142 (1) and 143 (2) of the Income Tax Act 1961. Except notices dated 20.7.2023 and 29.07.2023, the petitioner replied to the other notices. Being dissatisfied with the explanation of the petitioner, show cause notice dated 10.03.2024 was issued proposing several variations. On receipt thereof, the petitioner requested for an adjournment by communication dated 12.03.2024. Such request was not accepted, and the impugned assessment order dated 22.03.2024 was issued.

3. Learned counsel for the petitioner invited my attention to the details of opportunities given, as set out in the impugned order, and pointed out that the

petitioner responded to most of the notices issued prior to the show cause notice. As regards the show cause notice, he submits that the petitioner requested for an adjournment. Since the petitioner was not granted further time to the reply to the show cause notice, he contends that grave prejudice was caused.

4. In response to these submissions, Dr.B.Ramaswamy, learned senior standing counsel, who accepts notice for the respondent, contends that the petitioner did not respond to the notice under section 142 (1) issued on 20.07.2023. He also points out that there is no response to communication dated 29.12.2023. As regards the show cause notice, he points out that such notice was issued on 10.03.2024 and that the petitioner did not reply thereto except by requesting for an adjournment. In these circumstances, he contends that no case is made out for interference with the impugned assessment order.

5. The petitioner has placed on record the notices issued under sections 142 (1) and 143 (2). On perusal of such notices, it is clear that the petitioner was requested to submit specific documents and provide information. In response to such requests, the petitioner has submitted documents and provided information. Eventually, upon being dissatisfied with the petitioner's explanation, impugned show cause notice dated 10.03.2024 was issued calling upon the petitioner to submit an explanation on or before 14.03.2024. The time granted to

the petitioner to respond to the show cause notice, i.e. about 4 days, cannot be construed as reasonable. Moreover, within the said time limit, the petitioner requested for an adjournment on 12.03.2024. In these circumstances, the interest of justice warrants that the petitioner be provided an opportunity to respond to the show cause notice before an assessment order is issued. Nevertheless, in view of the fact that proceedings against the petitioner commenced in June 2023 and considerable time has lapsed, it is appropriate that the petitioner pays costs of Rs.10,000/-. On instructions, learned counsel for the petitioner submits that the petitioner agrees to pay such costs.

6. Therefore, impugned order dated 22.03.2024 is set aside and the matter is remanded for reconsideration subject to the condition that the petitioner pays a sum of Rs.10,000/- to the Cancer Institute, Adyar, as agreed to within two weeks from the date of receipt of a copy of this order. The respondent is directed to provide access to the portal so as to enable the uploading of a reply to the show cause notice. Such reply shall be uploaded within two weeks from the date when the portal is enabled. Upon receipt thereof, the respondent is directed to provide a reasonable opportunity to the petitioner, including a personal hearing by video conference, and thereafter issue a fresh assessment order within three months from the date of receipt of the petitioner's reply.

7. This writ petition is disposed of on the above terms without any order as to costs. Consequently, connected miscellaneous petitions are closed.

04.06.2024

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

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To

The Assessment Unit,
Income Tax Department,
New Delhi.

SENTHILKUMAR RAMAMOORTHY, J.

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