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W.P.No.12650 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.06.2024

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THE HON'BLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

W.P.No.12650 of 2024

and

W.M.P.Nos.13800 & 13801 of 2024

Coonoor Sri Thanthi Mariamman Kerala Seva Sangam
Rep. by its Secretary – M. Baskar
A Seva Sangam Market, Coonoor
The Nilgiris – 643102
PAN No.AAHFC6234H

... Petitioner

Versus

1.Assesment Unit,
Income Tax Department,
Ministry of Finance

2. Income Tax Officer,
Ward 1, Ooty
Tamil Nadu – 643001

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, pleased to issue a Writ of Certiorari calling for the records of the 1st Respondent herein in Impugned Order No.DIN:ITBA/AST/S/147/2023-24/1063300868(1) dated 24.03.2024 passed by the 1st respondent for the Assessment Year 2018-19 and quash the same.

For Petitioner : Mr.G. Varadhini Karthick

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



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ORDER

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2. Upon the assessment of the petitioner being reopened by issuing an order under Section 148A(d) and notice under Section 148, the petitioner filed a return of income for the assessment year 2018-19. Upon scrutiny thereof, a notice dated 22.06.2023 was issued under Section 143(2) of the Income Tax Act, 1961 (the *I-T Act*). The petitioner replied on 05.07.2023. Thereafter, a notice under Section 142(1) was issued on 28.11.2023. The petitioner replied thereto on 08.12.2023. This was followed by show cause notice dated 16.03.2024 calling upon the petitioner to reply on or before 17.03.2024. The petitioner replied on 17.03.2024. The order impugned herein was issued in these facts and circumstances on 24.03.2024.

3. Learned counsel for the petitioner referred to the notice under Section 143(2) and the reply thereto. She pointed out the petitioner had stated that the amount received in the South Indian Bank was only



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Rs.43,21,783/- not Rs.85,84,660/-. She also pointed out that the petitioner had annexed a certificate from the South Indian Bank corroborating the statement that the amount received was Rs.42,92,330/- and not Rs.85,84,660/-. By referring to the show cause notice dated 16.03.2024, she pointed out that the petitioner had granted only one day's time to reply thereto. She also pointed out that the impugned order does not contain any discussion of the petitioner's replies or the documents submitted in support thereof. Hence, she submits that the impugned order is unsustainable.

4. Dr. B. Ramasamy, learned senior standing counsel, accepts notice on behalf of the respondent. By referring to the details of opportunities provided, as per the impugned order, he pointed out that the petitioner did not reply to several notices, including the notice under Section 148, the notice under Section 142(1), etc. By further submitting that the impugned order records that the petitioner has made cash deposits in the South Indian Bank of an aggregate amount of Rs.85,84,660/-, he submits that the variations were confirmed because the petitioner did not satisfactorily explain the sources of such cash deposits. Since the impugned order is a reasoned order, he submits that no case is made out for interference by this



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Court. Learned counsel also submits that a personal hearing was offered to the petitioner through video conferencing. He also submits that the details of bank deposits were mentioned with complete particulars in the order issued under Section 148A(d).

5. Upon considering the rival submissions, the first aspect to be noticed is that the show cause notice provided one day's time for the petitioner to reply. This was clearly not reasonable. Secondly, in the petitioner's reply to the notice under Section 143(2) dated 22.06.2023, the petitioner stated as under:-

“RESPECTED SIR WITH REFERENCE TO YOUR NOTICE WE HAVE TO SUBMIT THAT, WE HAVE NO INCOME ASSESSABLE TO TAX. THE RECEIPT OF RS.8584660/- AS HAVING BEEN RECEIVED INTO OUR ACCOUNT WITH THE SOUTH INDIAN BANK IS NOT CORRECT. THE ACTUAL DEPOSITS DURING THE PERIOD 1.4.2017 TO 31.3.2018 IS ONLY 4321783/-. THESE DEPOSITS ARE NOT INCOME, BUT ARE CONTRIBUTION MADE BY OUR MEMBERS FOR THE CHIT SAVINGS. SINCE WE ARE CONDUCTING CHITS FOR THE MUTUAL BENEFITS OF THE MEMBERS. THE INTEREST INCOME OF 13642/- IS ALSO BELOW TAXABLE LIMIT, AS SUCH NO INCOME HAS ESCAPED



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*ASSESSMENT AND WE REQUEST YOU TO THEREFORE
KINDLY DROP THE PROCEEDINGS.. COPY OF BANK
STATEMENTS ARE SENT SEPARATELY. THANKING YOU
YOURS FAIFTHFULLY COONoor THANthi
MARIAMMAN KERALA SEVA SANGAM.”*

Similar statements are contained in the petitioner's reply dated 17.03.2024 to the show cause notice. A statement from the South Indian Bank to the effect that the amount received in the bank account was Rs.42,92,330/- and not Rs.85,84,660/- was submitted by the petitioner as an attachment to the reply dated 17.03.2024.

6. On perusal of the impugned assessment order, I find no consideration of these contentions or documents. For these reasons, the impugned order is not sustainable.

7. Therefore, the impugned order dated 24.03.2024 is set aside and the matter is remanded for reconsideration. The petitioner is permitted to submit additional documents, if any, within a maximum limit of 15 days from the date of receipt of a copy of this order. To enable the uploading thereof, the respondents are directed to take necessary action to provide



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access to the portal. The first respondent is directed to provide a reasonable opportunity, including a personal hearing, and thereafter issue a fresh assessment order within three months from the date of receipt of additional documents from the petitioner.

8. The Writ Petition is disposed of on the above terms. There shall be no order as to costs. Consequently, the connected miscellaneous petitions are also closed.

06.06.2024

Index : Yes/No
Speaking/Non-Speaking
Neutral Case Citation : Yes/No

klt

To

1. Assessment Unit,
Income Tax Department,
Ministry of Finance

2. Income Tax Officer,
Ward 1, Ooty
Tamil Nadu – 643001



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SENTHILKUMAR RAMAMOORTHY,J

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