IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 25.09.2024
Coram
The Honourable **Mr.Justice Krishnan Ramasamy**

W.P.No.16398 of 2023
and
W.M.P.Nos.15762 & 15765 of 2024

Panjalingam Murali Kumar ...Petitioner

Vs.

The Income Tax Officer,
Ward 2 (4), Tiruppur,
BSNL Annex Building,
Rayapuram Road, Tirupur- 641 601. ...Respondent

Prayer

Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari to call for records of the impugned notice under Section 148 A (b) dated 30.03.2023 having DIN & Notice No.ITBA/AST/F/148A(SCN)/2022-23/1051634754(1) in PAN : ARMPM0481C for AY 2019-20 impugned notice under Section 148 (b) dated 31.03.2023, having DIN & Notice No.ITBA/AST/F/148A(SCN)/2022-23/1051736217(1) in PAN: ARMPM0481C for AY 2019-20 impugned order under Section 148 (d) dated 13.04.2023 having DIN & Notice No.ITBA/AST/F/148A/2023-24/1052055237(1) in PAN : ARMPM0481C for AY 2019-20 and the impugned notice under Section 148 dated 13.04.2023 having DIN & Notice

No.ITBA/AST/S/148-1/2023-23/1052055288(1) in PAN :ARMPM0481C for AY 2019-20 in furtherance to the order under Section 148 (d) all issued by the respondent and to quash the same as illegal.

For Petitioner : Mr.S.Anandh

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

Order

The challenge in this Writ Petition is to the notice/orders issued by the respondent under Section 148 A (b) dated 30.03.2023, 148 (b) dated 31.03.2023 and the order passed under Section 148 (d) dated 13.04.2023 for the assessment year 2019-20 and the notice issued under section 148 dated 13.04.2023 and to quash the same.

2. Mr.S.Anandh, learned counsel for the petitioner would submit that initially, a show cause notice was issued to the petitioner under Section 148 (b) dated 30.03.2023, on the ground of escaped assessment based on two informations and subsequently, another show cause notice in respect of the same issue, that the petitioner filed replies to the show cause notices on

07.04.2024 and 11.04.2023 pursuant to which, an order was passed under Section 148 A(d) dated 13.04.2024 and a notice under Section 148 dated 13.04.2023 was issued.

2.1 The learned counsel assailed the impugned order/notices by contending that the respondent issued two show cause notices under Section 148 A (b) dated 30.03.2023 and 31.03.2023, first show cause notice was based on three informations and second show cause notice was based on three informations, of which, two informations are similar to that of first show cause notice, and only third information was an additional information, however, order came to be passed against the petitioner under Section 148 (d) and notice under Section 148 was issued, based on the information, which was not the subject matter of the two show cause notices, which is in violation of principles of natural justice and also Section 148 A (b) of the Act.

3. Dr.B.Ramaswamy, the learned Senior Standing Counsel (T) for the respondent would submit that based on the issuance of the show cause notices, the petitioner filed replies along with supportive documents, and insofar as document adduced by the petitioner related to donation receipt for a sum of Rs.174900 given by the petitioner to some political party, viz., Yuva Jan Jagruti Party, is concerned, the Income Tax Department conducted a surprise check, and on investigation, it was found that the said party is one of the main entities that is involved in providing accommodation entries in the form of bogus donations and therefore, based on such information, the petitioner was proceeded further and an order under Section 148 A (d) has been passed and consequential notice under Section 148 of the Act has been issued, calling upon the petitioner to file return of income for assessment year 2019-20 within 30 days. Therefore, the learned Senior Standing Counsel submitted that the

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

5. The petitioner is an assessee on the files of the respondent under the provisions of the Income Tax Act, 1961. For the AY 2019-20, the petitioner was issued with a first show cause notice under Section 148 A (b) of the Income Tax Act, 1961 dated 30.03.2023, on the ground of escaped assessment based on two informations :-

i) As per TDS statement – salary excluding HRA/PF amount received from WIPRO Ltd was to the tune of Rs.31,48,489/-.

ii) Interest income of Rs.8641 received from Vijaya Bank

5.2 Subsequently, the petitioner was issued with second show cause notice under Section 148 A (b) of the Act dated 31.01.2023 which was similar to the first show cause notice, but with a difference of additional information mentioned below:-

i) Details of chapter VI-A claimed by you along with supporting documentary evidence.

5.3 The petitioner filed replies dated 07.04.2023 and 11.04.2023 to the show cause notices dated 30.03.2023 and 31.03.2023 respectively along with supportive documents in support of claims made under Chapter VI A. The respondent, based on those replies, passed an order under Section 148

A (d) dated 13.04.2023, stating that it is a fit case for issuance of notice under Section 148 of the Act and subsequently, issued impugned notice under Section 148 dated 13.04.2023 calling upon the petitioner to file return of income for assessment year 2019-20 within 30 days.

5.4 The grievance of the petitioner is that Section 148 A (b) mandates that the assessee (petitioner in this case) should be put on notice in respect of the issue, which formed the basis for issuance of notice under said Section, whereas, in the present case, though the respondent issued two show cause notices dated 30.03.2023 and 31.03.2022, first show cause notice was based on two informations and second show cause notice was based on three informations, of which, two informations are similar to that of first show cause notice, and only third information was an additional information, however, order came to be passed under Section 148 (d) in respect of the issue, which was not the subject matter of the two show cause notices and notice under Section 148 was issued, which, according to the petitioner, suffers from violation of provisions contemplated under Section 148 A (b) and also violation of principles of natural justice, since the respondent was completely silent about the information available with them with regard to the search conducted with the Political Party, in relation to the donation receipt issued by the petitioner for a sum of Rs.1,74,900/- to political party, therefore, the impugned order/notice both dated 13.04.2023 are liable to be set aside. However, this Court is not inclined to accept the contention of the petitioner for the reason that, the petitioner submitted replies to show cause notices, annexing certain documents and the respondent, after going through those replies and on through scrutiny of the documents, found some irregularities with regard to the genuineness of such documents, hence, they conducted a investigation and gathered certain informations, based on which, an order was passed under Section 148 A (d) of the Act.

5.5 Thus, the respondent passed such an order under Section 148 A (d) dated 13.04.2023, and issued consequential notice under Section 148 of the Act dated 13.04.2023, only based on the informations, which were gathered during the surprise check conducted by the Enforcement Officials, which was in relation to the document produced by the petitioner in support of his case at the time of filing reply. Further, by virtue of the notice issued under Section 148, the petitioner was directed to file returns within the specified time, therefore, the petitioner shall file returns in terms of Section 148 of the Act and if the petitioner is aggrieved by the Section 148 notice, the petitioner can very well file reply to the said notice.

6. Therefore, I do not find any merit in the contention raised by the petitioner.

7. Accordingly, the Writ Petition is dismissed. However, the petitioner is permitted to file returns in terms of Section 148 of the Act within a period of 30 days from the date of receipt of a certified copy of this order. The petitioner is also directed to file reply to notice issued under Section 148 notice dated 13.04.2024 within a period of two weeks from the date of filing returns. No costs. Consequently, connected Miscellaneous Petitions are closed.

25.09.2024

sd
Index : yes/no
Neutral Citation : yes/no
Issue order copy on 25.10.2024

To

The Income Tax Officer,
Ward 2 (4), Tiruppur,
BSNL Annex Building,
Rayapuram Road, Tirupur- 641 601.

Krishnan Ramasamy,J.,

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W.P.No.16398 of 2023

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