IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.07.2024

CORAM :

THE HON'BLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

W.P.No.16108 of 2024
&
WMP Nos.17636 & 17637 of 2024

Periasamy Kannadasn ... Petitioner

Versus

National Faceless Assessment Centre,
Room No.401, 2nd Floor, E-Ramp,
Jawaharlal Nehru Stadium,
Delhi-110 003
Represented by Assessment Unit
Income Tax Department. ...Respondent

Prayer : A Writ Petition filed under Article 226 of the Constitution of India pleased to issue a Writ of Certiorarified Mandamus calling for the records of the Respondent leading to passing order dated 22.12.2023 vide DIN:ITBA/AST/S/147/2023-24/1059009006(1) and quash the same and direct the Respondent to pass re-assessment order afresh after affording an opportunity to the Petitioner.

For Petitioner : Mr.S.Sathyanarayanan

For Respondent : Dr.B.Ramaswamy
Senior Standing Counsel

COMMON ORDER

An assessment order dated 22.12.2023 is the subject of challenge in this writ petition.

2. In respect of assessment year 2016-17, proceedings were initiated against the petitioner by issuing show cause notice dated 01.12.2023. Such proceedings culminated in the impugned assessment order.

3. Learned counsel for petitioner refers to the assessment order and points out that all communications were addressed to the petitioner at No.25/43, Jawahar Nagar, II Street, Tiruppur 641

602, which is not the current address of the petitioner. He also points out that the assessment order records that such communications were returned with the endorsement “Items Returned No such person in the address”. By referring to the bank statement of the account in Axis Bank, he points out that the said bank statement specifies the current address of the petitioner. In these circumstances, he seeks an opportunity to contest the matter on merits.

4. Dr.B.Ramaswamy, learned senior standing counsel, accepts notice for the respondent. He submits that the petitioner applied for and obtained a PAN. If the petitioner's address changed thereafter, he submits that it was incumbent on the petitioner to inform the Income Tax Department about such change of address and to update the changed address. He also submits that the bank statement discloses credits of the aggregate value of about Rs.87 lakhs. In spite of making substantial deposits

in the bank account, he submits that the petitioner failed to file the return of income for the relevant assessment period. He also points out that all the communications were sent by email to the registered email ID of the petitioner and such proceedings were delivered to the email ID. Therefore, he submits that no case is made out for interference.

5. In the impugned assessment, it is recorded as under:

> *"4.3 Since there was no response from the assessee with regard to the notices issued, a letter was issued by the National Faceless Assessment center on 18/09/2023, advising the assessee to submit the response by logging in to registered account on the e-filing portal and through the 'e-proceeding' tab, which was delivered through email of the assessee. The said letter was also issued through speed post (Speed Post No.:JA277220198IN) at the address of the assessee at No.25/43*

JAWAHAR NAGAR II STREET, TIRUPUR 641 602, Tamil Nadu. As per information available in public domain the said letter was returned by the postal authority with the remarks " Item Returned No such person in the address"."

The above extract discloses that communications that were sent by post to the petitioner were returned unserved with the endorsement "Item Returned no such person in the address". The bank statement placed on record by the petitioner specifies an address different from the address to which communications were sent by the Income Tax Department. It is likely that the address to which communications were sent was the address specified in the application for PAN. As contended by learned senior standing counsel, it was incumbent on the petitioner to communicate the change of address. It also appears *prima facie* that the petitioner failed to file the return of income although being required to do so.

Therefore, the petitioner cannot be completely absolved of responsibility for the present state of affairs. At the same time, it cannot be lost sight of that a substantial addition was made without the petitioner being heard. For such reason, the assessment order requires reconsideration subject to imposing costs on the petitioner.

6. For reasons set out above, the impugned assessment order dated 22.12.2023 is set aside on condition that the petitioner pays a sum of Rs.15,000/- as costs to the Adyar Cancer Institute, Chennai, within three weeks from the date of receipt of a copy of this order. Within the said period, the petitioner is permitted to submit a reply to the show cause notice. In order to enable the petitioner to upload such reply, the respondent is directed to provide access to the portal. Upon receipt of the petitioner's reply and on being satisfied that costs were paid by the petitioner, the assessing order is directed to provide a reasonable opportunity to

the petitioner, including a personal hearing by video conference, and thereafter issue a fresh order within four months from the date of receipt of the petitioner's reply.

7. W.P.No.16108 of 2024 is disposed of on the above terms. Consequently, WMP Nos.17636 & 17637 of 2024 are closed.

01.07.2024

Index : Yes / No

Internet : Yes / No

Neutral Citation : Yes / No

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SENTHILKUMAR RAMAMOORTHY,J

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To

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