IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **10.07.2024**

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THE HONOURABLE **MR.JUSTICE SENTHILKUMAR RAMAMOORTHY**

W.P.Nos.16706 & 16710 of 2024
and W.M.P.Nos.18342, 18343, 18348 & 18349 of 2024

Pandian Narayanan ... Petitioner in both WP's

-vs-

1.The Assessment Unit,
Income Tax Department,
National Faceless Assessment Centre
New Delhi.

2.The Income Tax Officer,
Non Corp. Ward 19(1) CHE
Room No.607, 6th Floor,
Aayakar Bhawan – Annexe Building,
Mahatma Gandhi Road, Nungambakkam,
Chennai – 600 034. ... Respondents in both WP's

PRAYER in W.P.No.16706 of 2024: Writ Petition filed under Article 226 of the Constitution of India, pleased to issue a Writ of Certiorari, calling for the entire records relating to the impugned order in DIN: ITBA/PNL/F/271(1)(c)/2024-25/1065360874(1) dated 03.06.2024 passed by the 1st respondent and quash the same.

PRAYER in W.P.No.16710 of 2024: Writ Petition filed under Article 226 of the Constitution of India, pleased to issue a Writ of Certiorari, calling for the entire records relating to the impugned order in assessment order in DIN: ITBA/AST/S/147/2023-24/1060223543(1) dated 29.01.2024 passed by the 1st respondent and quash the same.

For Petitioner in both WP's : Mr.T.Ramesh

For Respondents in both WP's : Mrs.S.Premalatha, Jr. SC

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COMMON ORDER

An assessment order dated 03.06.2024 and penalty order dated and 29.01.2024 are challenged in these writ petitions on the ground that the petitioner did not have a reasonable opportunity to contest the proposed addition on merits. A notice under Section 148A(b) of the Income Tax Act, 1961 was issued to the petitioner on 18.03.2022 in relation to assessment year 2015-16. Such notice was triggered by information flagged in accordance with the risk management strategy of the Central Board of Direct Taxes. The petitioner replied to such notice on 29.03.2022 and stated that the petitioner had approached the Indian Overseas Bank, Palladam Branch, for sanction of a housing loan for Rs.42,00,000/- and that such loan was sanctioned on 14.08.2014. The petitioner also referred to the sources of income for the purchase of the immovable property. Documents relating to the purchase of the property were also annexed. The said reply was rejected on the ground that the assessee had not substantiated sources other than the loan from the Indian Overseas Bank. The assessee did not participate in proceedings pursuant to the notice under Section 148. The impugned assessment order and penalty order were issued in the above facts and circumstances.

2. Learned counsel for the petitioner referred to the request made by the petitioner for permission to purchase the immovable property and to the proceedings of the Commissioner of Municipal Administration granting such permission. He further submits that the petitioner was transferred from his original place of employment and, therefore, was unable to participate in proceedings.

3. Mrs.S.Premalatha, learned junior standing counsel, accepts notice for the respondents. By referring to the impugned assessment order, she points out that all the notices were delivered to the assessee on the e-filing portal and also to the registered e-mail

address of the assessee. By referring to the details of opportunities given to the assessee, she submits that the Section 148 notice was followed by notices under Section 142(1). Since the petitioner did not reply thereto, two show cause notices were issued before issuing the impugned assessment order. In these circumstances, she submits that no interference is warranted.

4. By the impugned assessment order, the entire sale consideration for the purchase of the immovable property, i.e., a sum of Rs.65,00,000/-, was added to the total income of the assessee. Such addition was made notwithstanding the fact that the petitioner had submitted documentary evidence with regard to the sanction of a loan of Rs.42,00,000/- by the Indian Overseas Bank. This aspect was noticed in the order under Section 148A(d), wherein it was concluded that the assessee had failed to substantiate the sources of income for the remaining Rs.23,00,000/-. However, while issuing the impugned assessment order, these aspects were not taken into consideration

perhaps on account of non participation by the petitioner. As a result, the total sale consideration was added to the income of the assessee. Notwithstanding the non participation by the assessee, this approach has caused great hardship. The assessee, however, cannot be excused for non participation especially in view of the number of notices that were both uploaded and served by e-mail. In these facts and circumstances, it is just and appropriate to impose costs on the petitioner.

5. For reasons set out above, impugned assessment order dated 03.06.2024 is set aside subject to the condition that the petitioner pays a sum of Rs.40,000/- as costs to the Adyar Cancer Institute within ***fifteen days*** from the date of receipt of a copy of this order. The petitioner is also permitted to submit a reply to the show cause notice within the said period. In order to enable the petitioner to upload the reply, the respondents are 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 first respondent is directed to provide a reasonable opportunity to the petitioner, including a personal hearing by video conferencing, and thereafter issue a fresh assessment order within ***three months*** from the date of receipt of the petitioner's reply. In view of the assessment order being set aside, the consequential penalty order is also set aside.

6. W.P.Nos.16706 and 16710 of 2024 are disposed on the above terms. No costs. Consequently, W.M.P.Nos.18342, 18343, 18348 and 18349 of 2024 are closed.

10.07.2024

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

To

1.The Assessment Unit, Income Tax Department,
National Faceless Assessment Centre, New Delhi.

2.The Income Tax Officer, Non Corp. Ward 19(1) CHE

Room No.607, 6th Floor, Aayakar Bhawan – Annexe Building,
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SENTHILKUMAR RAMAMOORTHY,J

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