IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **12.07.2024**

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THE HONOURABLE **MR.JUSTICE SENTHILKUMAR RAMAMOORTHY**

W.P.No.16939 of 2024
and W.M.P.Nos.18652 & 18653 of 2024

Basheera Begum ... Petitioner

-vs-

1.The Joint Commissioner of Income Tax,
Office of Additional Commissioner of Income Tax,
Cuddalore Range, Cuddalore 607 002.

2.The Income Tax Officer,
Income Tax Office,
Ward – 4, Cuddalore. ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, pleased to issue a Writ of Certiorari, calling for the records relating to the impugned Assessment Order dated 15.02.2024, bearing PAN No. BYOPB2871B having reference DIN No. ITBA/AST/S/147/2023-2024/10606969549(1) for the A.Y. 2019-2020 and its consequent Demand Order dated 15.02.2024 issued by the 2nd respondent and all proceedings pursuant thereto and quash the same as illegal and arbitrary.

For Petitioner : Mr.Abdul Rahman

For Respondents : Mrs.S.Premalatha, Jr. SC

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ORDER

An assessment order dated 15.02.2024 is challenged in this writ petition on the ground that materials placed on record by the petitioner were not duly taken into consideration. In respect of assessment year 2019-20, the petitioner did not file the return of income. Pursuant to notice under Section 148 of the Income Tax Act, 1961 (the I-T Act), proceedings were initiated against the petitioner. Upon receipt of notice dated 08.09.2023 under Section 142(1) of the I-T Act, the petitioner submitted reply dated 02.10.2023. By such reply, the petitioner stated that she sold a property during financial year 2017-18 and invested the sale proceeds in fixed deposits. She further stated that a sum of Rs.18,76,954/- was earned as interest thereon. Along with such reply, the petitioner attached several documents such as the income computation statements along with schedules and the income tax challan. On receipt of further notice dated 28.11.2023, the petitioner replied on 12.12.2023 and attached documents such as the bank account statement from the City Union Bank, copy of the sale deed and earlier assessment orders. Being dissatisfied with such reply as regards the above mentioned interest income, show cause notice dated 08.01.2024 was issued. The petitioner failed to reply thereto and asserts that the failure to reply was on account of health issues. The impugned assessment order was issued thereafter.

2. Learned counsel for the petitioner referred to both replies dated 02.10.2023 and 12.12.2023 and submitted that the petitioner had annexed the tax paid challan indicating that a sum of Rs.2,33,839/- was paid as income tax. He also submits that the bank

statement from the City Union Bank was annexed and that such bank statement indicates the payment of interest on the fixed deposit. By referring to Section 69A of the I-T Act, learned counsel contends that the said provision is attracted only if the source of income is not adequately explained by the assessee. In this case, he submits that the assessee clearly indicated the source of income and annexed documents to corroborate the same. He relies upon the judgment of the Income Tax Appellate Tribunal in *Konathala Nooky Naidu v. The Income Tax Officer, Anakapalle in I.T.A. No.269/Viz/2023*.

3. Mrs.S.Premalatha, learned junior standing counsel, accepts notice for the respondents. By referring to the impugned assessment order, she submits that multiple opportunities were provided to the petitioner by issuing notice under Section 148 and several notices under Section 142(1) before the show cause notice was issued. She points out that the show cause notice was not replied to. She also submits that the petitioner did not explain by the two replies that tax was remitted on the interest income. Since an alternative remedy is

available, she submits that no case is made out for interference.

4. On perusal of the petitioner's reply dated 02.10.2023, it is noticeable that the petitioner stated categorically that the amounts specified in the notice under Section 142(1) were received as interest income. The petitioner annexed an income computation statement and the income tax paid challan for the relevant assessment year. Such challan has also been placed on record and indicates that a sum of Rs.2,33,839/- was paid by way of self assessment tax for assessment year 2019-20. The petitioner further attached documents to the reply dated 12.12.2023 and these documents include copies of the relevant sale deed and the bank account statements. On examining the impugned assessment order, it appears that the assessing officer took note of the sale deed relating to the sale of property. The contention of the petitioner with regard to interest income having accrued from fixed deposits was also noticed. However, the income tax challan and the TDS were not taken into consideration. At the same time, it should be noticed that the

assessee failed to reply to the show cause notice or file the return of income even after a notice under Section 148 was issued. In these circumstances, it is appropriate that the matter is remanded by imposing costs on the petitioner.

5. For reasons aforesaid, impugned assessment order dated 15.02.2024 is set aside on condition that the petitioner pays costs of Rs.15,000/- to the Tamil Nadu State Legal Services Authority within ***two weeks*** from the date of receipt of a copy of this order. Within the said period, the petitioner is permitted to reply to the show cause notice. In order to enable the petitioner to upload such 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 received, the assessing officer is directed to provide a reasonable opportunity to the petitioner, including a personal hearing, and thereafter issue a fresh assessment order within ***three months*** from the date of receipt of the petitioner's reply.

6. W.P.No.16939 of 2024 is disposed of on the above terms. No costs. Consequently, W.M.P.Nos.18652 and 18653 of 2024 are closed.

12.07.2024

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

To

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SENTHILKUMAR RAMAMOORTHY,J

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