IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **29.01.2023**

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THE HONOURABLE **MR.JUSTICE SENTHILKUMAR RAMAMOORTHY**

W.P.No.19327 of 2022 & W.P.No.12919 of 2023
&
WMP Nos.18599 of 2022 & 12703 & 12704 of 2023

W.P.No.19327 of 2022

Mrs.Anitha Radhakrishnan ... Petitioner

vs

Income Tax Officer,
Non-Corporate Ward 7(1),
Income Tax Department,
121, Mahatma Gandhi Road,
Nungambakkam, Chennai-600 034. ... Respondent

W.P.No.12919 of 2023

Mrs.Anitha Radhakrishnan ... Petitioner

vs

1. The Faceless Assessment Officer (FAO)
   Assessment Unit, NaFAC-3(1),
   National Faceless Assessment Centre,
   4th Floor, Mayur Bhavan,
   Connaught Circus, New Delhi-110 001.

2. The Income Tax Officer,
   Non-Corporate Ward 7(1),
   Income Tax Department,

121, Mahatma Gandhi Road,
Nungambakkam, Chennai-600 034. ... Respondents

PRAYER in W.P.No.19327 of 2022: Writ Petition filed under Article 226 of the Constitution of India to issue a writ of Certiorarified Mandamus calling for the records of the Respondent contained in its order bearing DIN & Order No.ITBA/COM/F/17/2022-23/1043692933(1), dated 30.06.2022, passed by the Respondent under Section 148A(d) of the Income-tax Act, 1961, for PAN:ADQPR1368B, for Assessment Year 2015-16 and all proceedings in furtherance thereof and to quasht he same as arbitrary, unjust, illegal, barred by limitation and consequently forbear the Respondent or its superiors, subordinates, agents etc. from re-assessing the Petitioner's income for the Assessment Year 2015-16 under Section 147 of the Income Tax Act, 1961.

PRAYER in W.P.No.12919 of 2023: Writ Petition filed under Article 226 of the Constitution of India to issue a writ of Certiorari calling for the records leading to the issuance of assessment order bearing reference DIN:ITBA/AST/S/147/2022-23/1051483784(1) dated 28.03.2023 passed by the First Respondent herein and quash the same.

In both Writ Petitions

For Petitioner : Mr.Suhrith Parthasarathy

For Respondent : Mr.B.Ramanakumar,
Senior Standing Counsel

COMMON ORDER

In these two writ petitions, the order issued by the respondent under Section 148A(d) of the Income-tax Act, 1961 (the Income-tax Act) and the subsequent order of assessment issued on 28.03.2023 are challenged.

2. The petitioner is an assessee under the Income-tax Act and had received notice under Section 148A(b) thereof on 21.03.2022. The petitioner replied to such notice on 27.03.2022. An order dated 29.03.2022 was issued thereafter under Section 148A(d) of the Income-tax Act, which was followed by notice dated 31.03.2022 under Section 148 thereof. At that juncture, the petitioner challenged the Section 148A(d) order in W.P.No.10368 of 2022. The said writ petition was allowed by order dated 28.04.2022 by quashing the impugned order dated 29.03.2022 and remanding the matter for fresh adjudication. The petitioner was permitted to send a reply within three days from the date of receipt of the order and the third respondent therein was directed to issue a fresh order within one week thereafter.

3. Pursuant to the above order, the petitioner received a communication dated 27.06.2022 calling upon the petitioner to appear for a hearing on 28.06.2022. The petitioner replied thereto on 28.06.2022 and submitted that the time provided was insufficient to brief the Chartered Accountant and make effective submissions. However, the respondent issued an order under Section 148A(d) of the Income-tax Act on 30.06.2022. This order was challenged in W.P.No.19327 of 2022, which is one of the two writ petitions being considered and disposed of by this order. By order dated 28.07.2022 in the said writ petition, the respondent was permitted to continue with proceedings subject to the outcome of the writ petition.

4. In the above circumstances, a notice was issued under Section 142(1) of the Income-tax Act on 18.11.2022 and 05.01.2023, which were replied to by the petitioner on 23.01.2023. Thereafter, show cause notices were issued to the petitioner on 01.03.2023 and 13.03.2023. The petitioner responded thereto on 27.03.2023. Eventually, the proceedings culminated in the order impugned in W.P.No.12919 of 2023.

5. Learned counsel for the petitioner assailed the two impugned orders on about four grounds. The first ground is that the order dated 28.04.2022 in W.P.No.10368 of 2022 directed the Assessing Officer to issue orders within seven days from the date of receipt of the reply of the petitioner. Learned counsel pointed out that the date of receipt of the petitioner's reply was 21.06.2022 as per information received by the petitioner under the Right to Information Act, 2005. Therefore, he submitted that the seven day period should be computed from 21.06.2022. If so computed, learned counsel submits that the order dated 30.06.2022 was issued beyond the time limit of seven days fixed by this Court. The second ground of challenge is that the order issued earlier under Section 148A(d) of the Income-tax Act was quashed by order dated 28.04.2022. Once the said order was quashed, he contended that a fresh notice under Section 148 should have been issued pursuant to order dated 30.06.2022 under Section 148A(d) of the Income-tax Act. He also pointed out that this objection was raised by the petitioner in reply dated 23.01.2023. In fact, he pointed out that the petitioner contended that the earlier notice under Section 148 was quashed by order dated 28.04.2022.

6. With regard to the impugned assessment order, learned counsel referred to the reply dated 24.03.2023 of the petitioner and pointed out that the petitioner dealt with the averments in the respondent's order dated 30.06.2022 under several heads, which are at pages 190 to 195 of the typed set. By turning to the impugned order, learned counsel submitted that the reply of the petitioner on all these aspects was completely disregarded by the Assessing Officer. The last ground of challenge was that the virtual hearing was an empty formality and that no questions were put to the petitioner when the petitioner made submissions.

7. Mr.B.Ramanakumar, learned senior standing counsel, made his submissions in response. As regards the objection that the order dated 30.06.2022 was issued beyond the seven day time limit fixed by this Court, he submitted that the petitioner was required to submit a reply within three days and that the petitioner submitted the reply belatedly. He also pointed out that if allowance is made for the week-end, the said order was within the time limit of seven days. Even otherwise, by referring to Section 148A(d), he pointed out that statute provides for a 30 day time limit from the date of receipt of the

reply. His next submission was with reference to Section 292 BB of the Income-tax Act. He pointed out that an assessee who participates in an inquiry relating to assessment or re-assessment is precluded from subsequently objecting thereto on the ground of non-receipt of notice.

8. The first question that falls for consideration is with regard to the implications of the order dated 28.04.2022 in W.P.No.10368 of 2022. By the said order, the order under Section 148A(d) of the Income-tax Act was quashed. An order under Section 148A(d) is an essential pre-requisite for the issuance of notice under Section 148 for re-assessment proceedings in relation to escaped assessment. Put differently, unless an opinion is formed, pursuant to an inquiry, that there are reasonable grounds to initiate proceedings in relation to escaped assessment, a notice under Section 148 cannot be issued. Therefore, once the order under Section 148A(d) was quashed by this Court, the respondent was required to consider the petitioner's reply to the notice under Section 148A(b) and issue a fresh order under Section 148A(d). After such order was passed, a fresh notice under Section 148 should have been issued. Hence, I accept the contention of learned counsel for the petitioner.

9. As regards the contention that the order dated 30.06.2022 was issued beyond the time limit of seven days, it appears that the petitioner submitted a reply only on 20.06.2022 which seems to have been received by the respondent on 21.06.2022. Apart from the explanation that the order was within the time limit fixed by this Court if the intervening week-end was taken into consideration, I also find that Section 148A(d) provides a statutory time limit of 30 days from the date of receipt of the reply from the assessee.

10. The assessment order was also assailed on the substantive ground that the response of the petitioner in reply dated 24.03.2023 was not taken into consideration. On examining the impugned assessment order, I find that the said contention is liable to be accepted because there is no indication in the impugned order that the petitioner's contentions were taken into account. The petitioner also assailed the impugned assessment order on the ground that the virtual hearing proceeding was ineffective. The purpose of a personal hearing, whether physical or virtual, is to enable the assessee to

make submissions, provide clarifications and respond to questions, if posed. This can only be achieved if such hearing is interactive. Learned senior standing counsel submitted that faceless assessments were introduced so as to avoid the deleterious consequences of direct interaction. Even making an allowance for the same, an appropriate mechanism should be evolved by the Income-tax Department to ensure that such hearings are conducted in a meaningful manner.

11. For all the reasons discussed above, the orders impugned herein call for interference and are hereby quashed. In view of the conclusion that the order dated 30.06.2022 under Section 148A(d) of the Income-tax Act was issued without providing a reasonable opportunity to the petitioner, the proceedings are remanded for reconsideration from that stage. The assessing officer shall provide a reasonable opportunity to the petitioner and thereafter issue fresh orders under Section 148A(d) of the Income-tax Act. If appropriate, a notice under Section 148 may be issued thereafter in accordance with law.

12. In the result, both these writ petitions are allowed without any order as to costs. Consequently, the connected miscellaneous petitions closed closed.

29.01.2023

Index : Yes / No

Internet : Yes / No

Neutral Citation : Yes / No

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