IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.12.2024

CORAM :
THE HON'BLE MR.JUSTICE C.SARAVANAN

W.P.Nos.20164 & 20169 of 2022

M/s. Sree Balaji Developers
14/1, (Old No.44) South West Boag Road
T.Nagar, Chennai 600 017
Rep. By its partner P.Ravindra .. Petitioner in both W.Ps

Vs.

1. Additional/Joint/Deputy/Assistant Commissioner of IT
National Faceless Less Assessment Centre
Delhi.

2. Income Tax Officer, Non-Corporate Ward
1(6), Chennai 600 014.

3. Local Committee, National Faceless Assessment Centre
Taxpayers Grievances from High
Pitched Scrutiny Assessments
Chennai. .. Respondents in both W.Ps

Prayer in W.P.No.20164 of 2022: Petition filed under Article 226 of the Constitution of India seeking a writ of certiorari, calling for the records pertaining to DIN: ITBA/AST/S/147/2021-22/1041345568(1) on the file of the first respondent and quash the order dated 23.03.2022 passed by the first respondent; and

Prayer in W.P.No.20169 of 2022: Petition filed under Article 226 of the Constitution of India seeking a writ of mandamus, directing the respondents to consider the rectification petition dated 03.06.2022 filed by the petitioner under Section 154 of the Income Tax Act, 1961 in its proper perspective.

For the Petitioner in both W.Ps	:	Mr.V.S.Jayakumar Senior Counsel for Ms.G.Vardhini Karthik
For the Respondents in both W.Ps	:	Mr.B.Ramana Kumar Senior Standing Counsel

COMMON ORDER

By this common order, both these writ petitions are being disposed of.

2. In W.P.No.20164 of 2022, the petitioner is challenging the impugned Assessment Order dated 23.03.2022 passed by the first respondent for the Assessment Year 2016-17. In W.P.No.20169 of 2022, the petitioner has prayed for a direction against the respondents to consider the petitioner's application filed for rectification of mistake in the aforesaid impugned order dated 23.03.2022 vide rectification petition dated 03.06.2022.

3.1. The petitioner appears to be engaged in Real Estate business. The petitioner had few transactions and also filed return of income on 14.10.2016, disclosing the total income of Rs.91,12,576/-. Thereafter, a notice was issued to the petitioner on 22.10.2018 under Section 133(6) of the Income Tax Act, 1961, wherein, the petitioner was called upon to furnish the following documents:-

> (i) PAN and Mobile numbers
>
> (ii) Copy of the sale deed
>
> (iii) Copy of the Return of income filed for the Assessment Year 2016-17 along with Statement of total income, copy of financial accounts viz., balance sheet, P&L Account etc., with schedules.
>
> (iv) Statement of Bank Account in respect of the above immovable property Transaction.
>
> (v) Details along with evidence regrading the source for the above immovable property purchase.
>
> (vi) Whether TDS as per Sec. 194IA was deducted and paid. Please submit evidences for the same. If not deducted, reasons for the same may also be submitted.
>
> (vii) whether provisions of Sec.56(2)(vii)(b) of the IT Act, 1961 is applicable, if yes, whether the difference amount was offered for taxation? If not offered, reasons for the same may be submitted.

The petitioner replied to the same and has stated that the petitioner had only few transactions, for which, the petitioner has also paid commission to various brokers.

3.2. This has ultimately culminated in the show-cause notice dated 16.03.2022, which has also been replied by the petitioner on 18.03.2022. Thereafter, the respondent proceeded to pass the impugned Assessment Order dated 23.03.2022, which is impugned in W.P.No.20164 of 2022.

4.1. The learned Senior Counsel appearing for the petitioner admits that the petitioner has filed a statutory appeal under Section 246A of the Income Tax Act, 1961, before the Commissioner of Income Tax (Appeals) and the same is pending consideration by the Appellate Commissioner. It is also admitted that the petitioner had approached the Local Committee, who, by the order dated 19.09.2022, has rejected the request for reconsideration of the aforesaid order.

4.2. It is further submitted that the petitioner's application under Section 154 of the Income Tax Act, 1961, dated 02.06.2022 for rectification of the mistake in the impugned Assessment Order dated 23.03.2022 has also not been considered. The learned Senior Counsel would submit that the Department has solely relied on the information gathered from the DCIT (OSD)(Inv.) CBDT, New Delhi, however, particulars have not been furnished to the petitioner regarding the five transactions which is disputed by the petitioner. It is submitted that all the transactions were through Bank Accounts and proper rectifications were made by the buyer, namely M/s.Eschcube Properties.

4.3. The learned Senior Counsel for the petitioner would further submit that the petitioner had also requested the Department to furnish the details of sale deeds, based on which it has been concluded that the petitioner had transactions for Rs.22,76,80,800 and not Rs.538,40,400/-.

4.4. It is admitted that the petitioner sought information from the Department, however, the same was not furnished, yet the impugned order was passed on 23.03.2022. It is submitted that the petitioner also made some attempts to get the details of the documents under the Right to Information Act, 2005, from the Sub-Registrar Office, Neelankarai, however, no information has come from the SRO as well.

4.5. The learned Senior Counsel for the petitioner placed reliance on the following three decisions of the Supreme Court of India to substantiate the point that the petitioner cannot be expected to prove the negatives:-

(i) Kishinchand Chellaram vs. Commissioner of Income Tax[1]

(ii) Income Tax Officer & Ors. vs. Lakhmani Mewal Das[2]

(iii) Income Tax Officer vs. Madnani Engineering Works Ltd.[3]

It is further submitted that in the absence of any documents, the petitioner could not also call for any witnesses for cross examination, based on whose submissions or documents, the tax liability has been imposed.

1 *[1980] 125 ITR 713 (SC)*
2 *(1976) 103 ITR 0437*
3 *(1979) 118 ITR 0001*

4.6. The learned Senior Counsel would finally submit that although in respect of the notice dated 22.10.2018, the petitioner did not furnish the copy of the bank statement, the petitioner did furnish the same to the Local committee on 02.06.2022, as Annexure VI, after the impugned order was passed, which shows that the petitioner's conduct was *bonafide.* That apart, it is submitted that the petitioner got limited stay by the Assessing Officer for a period upto September, 2022 vide order dated 28.06.2022 under Section 220(6) of the Income Ta Act, 1961.

5.1. The learned Senior Standing Counsel for the respondent, on the other hand, would submit that the petitioner has been a recalcitrant assessee, who failed to cooperate with the Department and therefore, the Department was constrained to pass the impugned order herein. It is submitted that even though the notice was issued under Section 133(6) of the Income Tax Act, 1961 on 22.10.2018, subsequently, the petitioner was called upon to furnish a copy of the bank statement along with other documents, but the same was not furnished and it is submitted that even after issuance of show-cause notice-cum-draft Assessment Order dated 16.03.2022, the petitioner only furnished few documents barring the bank statement and therefore, there is a clear case where the petitioner has failed to cooperate with the Department, which has now culminated in the impugned Assessment Order dated 23.03.2022 under Section 147 r/w 144B of the Income Tax Act, 1961.

5.2. That apart, it is submitted that the petitioner has already filed an appeal before the Appellate Commissioner. Therefore, there are no merits in these writ petitions.

6.1. Considering the arguments advanced by the learned Senior Counsel appearing for the petitioner and the learned Senior Standing Counsel appearing for the respondents, and having considered the judgments cited by the learned Senior Counsel, this Court is not convinced that the petitioner has made out a case for interference with the impugned Assessment Order dated 23.03.2022.

6.2. Further, the petitioner has also filed an appeal before the Appellate Commissioner and has also secured an interim stay on 28.06.2022 under Section 220(6) of the Income Tax Act, 1961 up to September, 2022. Considering the fact that the petitioner has furnished the bank statements before the Local Authority, vide Annexure VI to the application dated 22.06.2022, this Court is inclined to dispose of these writ petitions with the following directions:

(i) The appeal, that has been filed before the Appellate Authority under Section 246A of the Income Tax Act, 1961, is directed to be disposed of, as expeditiously as possible, preferably within a period of six months from the date of receipt of a copy of this order.

(ii) The stay, that was earlier granted on 28.06.2022, shall continue to operate till disposal of the appeal pending before the

Appellate Commissioner against the impugned order dated 23.03.2022.

(iii) Since the petitioner has also filed the bank statement with the Local Authority, the Commissioner (Appeals) or the Appellate Authority under the new regime, may call for the remand report from the Assessing Officer and proceed to pass final orders.

7. In the result, these writ petitions stand disposed of. There shall be no order as to costs. Consequently, W.M.P.Nos.19388, 19389 & 19392 of 2022 are closed.

06.12.2024

Index : Yes/No

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To:

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C.SARAVANAN,J.

(drm)

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