IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 07.08.2024

CORAM

THE HON'BLE Mr. JUSTICE KRISHNAN RAMASAMY

W.P.Nos.19945 and 19948 of 2024
&
W.M.P.Nos.21825 and 21826 of 2024

SAMPATH KUMAR SRIKALA
MOTHER / LEGAL REPRESENTATIVE OF
LATE BHARATH
Old No.19, New No.27,
College road,
Chennai - 600 114.
PAN No.BDQPB6462F ... Petitioner in both Writ Petitions

Vs.

The Commissioner of Income Tax,
Central Processing Centre,
Bangalore. ... First Respondent in W.P.No.19948 of 2024

The Income Tax Officer,
Non Corporate Ward 19(4),
121 Mahatma Gandhi Road,
Nungambakkam, Chennai - 600 034. ...Second Respondent in W.P.No.19948 of 2024 & Sole Respondent in W.P.No.19945 of 2024

Prayer in W.P.No.19945 of 2024 : Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, to call for the records in PAN No.BDQPB6462F of Bharath (Deceased) for assessment year 2020-2021 and quash the impugned order passed under Section 148A(d) in DIN No.ITBA/AST/F/148A/2023-24/1063717344(1), dated 30.03.2024 and the consequential notice under Section 148 issued by the respondent dated 30.03.2024 for the AY 2020-21 and quash the same as without jurisdiction, and illegal.

Prayer in W.P.No.19948 of 2024 : Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus, directing the first respondent to dispose the application dated 02.12.2021 filed under Section 119(2)(b) to condone the delay in filing the return of income for AY 2020-01 on the ground of "genuine hardship" in the case of Bharath the deceased assessment in PAN No.BDQPB6462F.

For Petitioner in
both Writ Petitions : M/s.G.Vardini Karthik

For Respondent(s) in
both Writ Petitions : Mr.V.Mahalingam
Senior Standing Counsel

C O M M O N O R D E R

Mr.V.Mahalingam, learned senior standing counsel, takes notice for the respondent.

2.By consent of the parties, the main writ petitions are taken up for disposal at the admission stage itself.

3.The petitioner in both the writ petitions is one and the same. She is the mother of the original assessee by name, Bharath, who engaged in a housing and construction business. The original assessee died in a road accident on 20.10.2019, and hence, no return was filed for the Assessment Year 2020-2021. Subsequently, the petitioner, being the mother of the deceased, applied through the filing portal to act as her deceased son's legal heir, which is pending for approval. The petitioner also made an application under Section 119(2)(b) before the authority concerned, requesting to condone the delay in filing the return on 02.12.2021. Despite informing about the demise of her son, the respondent issued a notice dated 30.03.2024 under Section 148A(b) on the deceased assessee, stating that the income chargeable to tax has escaped assessment for the Assessment Year 2020-2021. Challenging the same, the petitioner preferred W.P.No.19945 of 2024 to quash the same. Additionally, she preferred W.P.No.19948 of 2024 for a direction to the respondent to dispose of the application dated 02.12.2021 seeking condonation of delay in filing the return of income for the Assessment Year 2020-2021.

4.The learned counsel for the petitioner submits that without considering the application filed by the petitioner under Section 119(2)(b) seeking to condone the delay in filing the return of income, the respondent passed the impugned order against the deceased assessee for reopening the assessment. According to the learned counsel, the respondent has not complied with the principles of natural justice and they acted in haste manner. It is also submitted that the wife of the deceased has given consent to the petitioner to pursue the matter and authorized her to act on her behalf.

5.Per contra, the learned Standing Counsel appearing for the respondent made his submission supporting the order impugned herein.

6.Heard both sides and perused the records.

7.It is an admitted fact that the original assessee died on 20.10.2019 and hence, no return was filed within the time, for the assessment year 2020-21. On 02.12.2021, the petitioner being the mother of the deceased assessee, has taken steps to file return of income of her deceased son along with condone delay petition. Without considering the same, the respondent passed the assessment order dated 30.03.2024 under section 148A(d) and issued notice under section 148 dated 30.03.2024 for reopening the assessment proceedings for the assessment year in question and calling upon the deceased assessee to furnish a return in the prescribed form.

8.It is settled law that no assessment or reassessment can be made on a dead person. Contrary to the same, the respondent passed the impugned order against the deceased assessee and the same is liable to be set aside on this ground alone. It is also to be noted that based on the consent given by the wife of the deceased-assessee, the petitioner filed the petition dated 02.12.2021, seeking condonation of delay in filing the return of income of the deceased assessee, which is pending, without any consideration by the respondent.

9.In view of the above, the order and the consequential notice dated 30.03.2024 passed by the respondent are set aside. The respondent is directed to consider the petition dated 02.12.2021 filed by the petitioner under Section 119(2)(b) and pass appropriate orders on merits and in accordance with law, after affording an opportunity of personal hearing to the petitioner, within a period of four weeks from the date of receipt of a copy of this order.

10.Both the writ petitions are disposed of on the above terms. No costs. Consequently, connected miscellaneous petitions are closed.

07.08.2024

Speaking/Non-speaking order
Index : Yes / No
Neutral Citation : Yes / No

r n s

KRISHNAN RAMASAMY, J.

r n s

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W.M.P.Nos.21825, 21826 of 2024
and
W.P.No.19948 of 2024

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