IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 03.10.2024
CORAM:

THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

WP.No.22011 of 2023
and W.M.P.Nos.21375 and 21377 of 2024

Rangasamy Boopathi .... Petitioner

Vs.

1.The Income Tax Officer,
Non Corp Ward-4 (1),
63, Race Course Road,
Coimbatore – 641 018.

2.The Principal Commissioner of Income Tax-1,
63, Race Course Road,
Coimbatore- 641 018.
3.The Income Tax Officer,
Assessment Unit,
National Faceless Assessment Centre,
Income Tax Department,
Ministry of Finance,
Room No.401, 2nd Floor, E-Ramp,
Jawaharlal Nehru Stadium,
Delhi-110 003. ... Respondents

Prayer:- Writ Petition is filed, under Article 226 of the Constitution of India, for issuance of Writ of Certiorari to call for the records in DIN:ITBA/AST/S/147/2023-24/1053308023(1) dated 30.05.2023 on the file of the 3rd respondent relating to the A.Y.2013-14 and quash the same.

For Petitioner : Mr.L.Dinesh
For Respondents : Dr.B.Ramasamy
Senior Standing Counsel

O R D E R

The present Writ Petition has been filed for issuance of a Writ of Certiorari, to call for the records in DIN:ITBA/AST/S/147/2023-24/1053308023(1) dated 30.05.2023 on the file of the 3rd respondent relating to the A.Y.2013-14 and quash the same.

2. The learned counsel for the petitioner would submit that a notice was issued by the 3rd respondent on 17.05.2023 calling upon the petitioner to file reply on or before 22.05.2023. The petitioner filed reply to the said notice on 22.05.2023 and requested to fix personal hearing on 06.06.2023 to substantiate his case. The 3rd respondent then issued a scheduling notice dated 29.05.2023 signed at 01.12 pm fixing the VC on 29.05.2023 itself at 04.00 p.m. Since the time provided by the respondent for personal hearing was meager, the petitioner was not able to attend the personal hearing through video conferencing. Hence, the 3rd respondent passed the impugned order of assessment u/s 147 r.w.s. 144B of the Act on 30.05.2023. Without affording an opportunity of personal hearing to the petitioner, the assessment order came to be passed on 30.05.2023. If the 3rd respondent is intended to take any action and pass the assessment order against the petitioner, it is mandatory to issue notice for personal hearing.

Therefore, he submitted that the impugned order is in violation of principal of natural justice. Hence, he prayed for setting aside the impugned order.

3. Learned Senior Standing counsel appearing for the respondent would submit that the department after providing an opportunity of personal hearing, issued notice dated 17.05.2023 and called the petitioner for personal hearing. Upon considering the reply of the petitioner dated 22.05.2023, the 3rd respondent issued a notice dated 29.05.2023 for personal hearing. Therefore, there is no merit in the submission of the petitioner. Hence, he prayed to dismiss the petition.

4. Heard the learned counsel for the petitioner and the learned Senior Standing counsel appearing for the respondents and perused the materials placed before this Court.

5. The main issue that arises for consideration in the present case is as to whether the opportunity of personal hearing was provided to the petitioner before the passing of assessment order. Initially, notice was issued on 17.05.2023 calling upon the petitioner to file reply on or before 22.05.2023 and the petitioner filed his reply on 22.05.2023 requesting to fix personal hearing on 06.06.2023. Pursuant to which, the 3rd respondent uploaded the notice dated 29.05.2023 at 01.12 p.m by providing short duration of 02.40 hours and fixed the personal hearing at 04.00 p.m. Due to the short duration, the petitioner was unaware of the notice and he was

not able to appear for personal hearing. Hence, the reasons provided by the petitioner for being unaware of the notice, which was uploaded in the web portal, are appears to be genuine.

6. In the case on hand, the impugned assessment order was passed against the petitioner without providing an opportunity of personal hearing. Thus, it is clear that the impugned order was passed in violation of principles of natural justice and hence, the same is liable to be set aside.

7. In view of the above, this Court passes the following order:

> i) The impugned order dated 30.05.2023 is set aside and remanded back to the respondent for fresh consideration.
>
> ii) If the petitioner is intend to file any additional reply, the same shall be filed within a period of 2 weeks from the date of receipt of copy of this order.
>
> iii) On filing of such additional reply by the petitioner, the respondent shall consider the same and issue a 14 days clear notice, by fixing the date of personal hearing, to the petitioner and thereafter, pass appropriate orders on merits and in accordance with law, after hearing the petitioner, as expeditiously as possible.

8. With the above directions, this Writ Petition is allowed. There

shall be no order as to costs. Consequently, the connected Miscellaneous Petitions are closed.

03.10.2024

Index:Yes/No
Web:Yes/No
Speaking/Non Speaking
msv

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KRISHNAN RAMASAMY, J.

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