IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 02.01.2024

C O R A M

The Hon'ble Mr. Justice **SENTHILKUMAR RAMAMOORTHY**

Writ Petition No.24790 of 2022
&
WMP Nos.23722 & 23723 of 2022
&
WMP No.381 of 2023

Jaganathan Bhaarath ... Petitioner

vs.

Assistant Commissioner of Income Tax,
Non-Corporate Circle 10(1),
Room No.603, Sixth Floor,
Wanaparthy Block,
121, Mahatma Gandhi Road,
Nungambakkam,
Chennai-600 034. ... Respondent

PRAYER : Petition filed under Article 226 of the Constitution of India praying to issue a writ of Certiorari to call for the records in DIN & Notice No:ITBA/COM/F/17/2022-23/1044345817(1) dated 30.07.2022 on the file of the Respondent relating to A.Y.2013-14 and quash the same.

For Petitioner : Mr.S.Sridhar and A.S.Sriraman

For Respondent : Mr.R.S.Balaji, Senior Standing Counsel(IT)
Ms.S.Premalatha, Junior Standing Counsel (IT)

ORDER

This writ petition is directed against order dated 30.07.2022 and a consequential notice.

2. A notice under Section 148 of the Income Tax Act, 1961 (Income Tax Act), was issued to the petitioner in respect of alleged escaped assessment for the Assessment Year 2013-14. Pursuant to directions issued by the Hon'ble Supreme Court in *Union of India v. Ashish Agarwal, [2022] 444 ITR 1 (SC),* such notice was treated as a notice under the amended provision [Section 148 A(b)] and the petitioner was called upon on 23.05.2022 to submit a reply thereto. According to the petitioner, the e-filing portal did not include a tab for the submission of an online reply. Consequently, the petitioner submitted the reply physically on 01.06.2022 and obtained an acknowledgment from the office of the Assistant Commissioner of Income Tax. A further reply was also submitted on 02.06.2022. In spite of such replies, learned counsel for the petitioner submits that

the impugned order proceeds on the basis that the assessee did not submit a reply to notice dated 23.05.2022. The present writ petition arises in the said facts and circumstances.

3. Learned counsel for the respondent submits that there was sufficient basis for the initiation of proceedings in respect of escaped assessment. Without prejudice to the contentions on merits, he submits that the matter may be remanded for consideration of the objections of the petitioner.

4. The documents on record include the reply dated 01.06.2022 of the petitioner to notice dated 23.05.2022. The said reply also bears acknowledgment dated 01.06.2022 of the relevant Income Tax Office. A subsequent reply dated 02.06.2022 is also on record and, likewise, the said reply also bears acknowledgment dated 02.06.2022 of the relevant office. In light of these documents, the conclusion in paragraphs 5 and 6 of the impugned order to the effect that the assessee did not file a reply to notice dated 22.05.2022 is

contrary to the documents on record. Therefore, the said order cannot be sustained.

5. For reasons set out above, this writ petition is allowed by quashing impugned order dated 30.07.2022 and the notices issued pursuant thereto. As a corollary, the matter is remanded for reconsideration. The Assessing Officer is directed to proceed with the matter on merits after duly considering the objections filed by the petitioner on 01.06.2022 and 02.06.2022 and after providing a reasonable opportunity to the petitioner. This exercise shall be completed within a period of 12 weeks from the date of receipt of a copy of this order. Consequently, connected connected miscellaneous petitions are closed. There shall be no order as to costs.

02.01.2024

Index : Yes/No

Internet : Yes/No

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To

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SENTHILKUMAR RAMAMOORTHY, J

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