IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 14.08.2024

CORAM

THE HON'BLE Mr. JUSTICE KRISHNAN RAMASAMY

W.P.No.23061 of 2024
& W.M.P.Nos.25155 & 25157 of 2024

Manickam

... Petitioner

Vs.

1.The Assessment Unit,
Income Tax Department,
New Delhi.

2.Income Tax Officer,
Ward 1(4), Tirupur,
No.121, Adams Plaza,
60th Road, Tirupur 641 602.

... Respondents

Prayer:

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, to call for the records on the file of the 1st respondent and quash the impugned order in ITBA/AST/S/144/2023-24/1062583127(1) dated 13.03.2024 passed under Section 144 read with Section 144B of the Income Tax Act, 1961 for the AY 2022-23 by the 1st respondent as illegal and not in accordance with law.

For Petitioner : Mr.R.Sivaraman

For Respondent : Dr.B.Ramaswamy,
Senior Standing Counsel

ORDER

This writ petition has been filed challenging the impugned order dated 13.03.2024 passed by the 1st respondent.

2. Dr.B.Ramaswamy, learned Senior Standing counsel, takes notice on behalf of the respondent. By consent of the parties, the main writ petition is taken up for disposal at the admission stage itself.

3. The learned counsel for the petitioner would submit that the petitioner, who was aged about 82 years, was unaware of the show cause notices uploaded by the respondent, due to which, he was unable to file his reply and appear for personal hearing. Under these circumstances, the impugned order came to be passed by the respondent.

4. Further, he would submit that there was a sale transaction pertaining to earlier assessment year 2021-22, however, the same was

disclosed in the present assessment year 2022-23. In this regard, he has also referred the certificate dated 10.05.2024 issued by the concerned Registrar that there was no sale transaction during the present assessment year i.e., AY 2022-23. Hence, he requested this Court to set aside the impugned order and pleaded for one more opportunity to substantiate his case before the concerned Authority.

5. In reply, the learned Senior Standing counsel appearing for the respondent had strongly objected for setting aside the impugned order and would submit that the petitioner should have engaged a Chartered Accountant if he is not well versed in operating the electronic equipments. However, considering the age of the petitioner, he would submit that any appropriate orders may be passed to remit this matter back to the respondent, subject to the payment of 10% of the demand amount.

6. Heard the learned counsel for the petitioner and the learned Senior Standing counsel for the respondents and also perused the materials available on record.

7. In the present case, the issue is pertaining to the sale of properties by the petitioner in the present assessment year. According to the petitioner, the property was sold during the earlier assessment year i.e., AY 2021-22 and not during the subject assessment year i.e., AY 2022-23. In this regard, he has also produced a certificate dated 10.05.2024 issued by the concerned Registrar.

8. Further, it appears that due to the lack of knowledge in operating the electronic equipments and GST Online portal, the petitioner was unaware of the notices uploaded by the respondent, due to which, he was not in a position to file any reply to the said notices. Under these circumstances, the impugned order came to be passed. Therefore, considering the age of the petitioner, who is a super senior citizen, this Court is inclined to set aside the impugned order and grant one more opportunity to him to establish his case. Accordingly, this Court passes

the following order:-

(i) The impugned order dated 13.03.2024 is set aside and the matter is remanded to the respondent for fresh consideration on condition that the petitioner shall pay 10% of demand amount to the respondent within a period of four weeks from today (14.08.2024) and the setting aside of the impugned order will take effect from the date of payment of the said amount.

(ii) Upon receipt of the aforesaid payment, the respondents are directed to open the GST portal to the petitioner for filing the reply within a period of 4 weeks therefrom. Subsequently, the petitioner shall file their reply/objection along with the required documents, if any, within a period of two weeks thereafter.

(iii) On filing of such reply/objection 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.

9. With the above directions, this writ petition is disposed of. No cost. Consequently, the connected miscellaneous petitions are also closed.

14.08.2024

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

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Income Tax Department,
New Delhi.

2.Income Tax Officer,
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KRISHNAN RAMASAMY.J.,

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