IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.08.2024

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THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.No.26849 of 2021
and
W.M.P.Nos.28303 and 28305 of 2021

S.Santhakumari ... Petitioner

Vs

The Income Tax Officer,
Ward 1(1),
Erode. ... Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorari, to call for the records in DIN:ITBA/AST/S/147/2021-22/1036012826(1) dated 29.09.2021 on the file of the respondent relating to A.Y.2013-2014 and quash the same.

For Petitioner : Mr.G.Baskar

For Respondent : Dr.B.Ramaswamy
Senior Standing Counsel

ORDER

In this writ petition, the petitioner has challenged the impugned Assessment order dated 29.09.2021. The impugned order has been passed under Section 147 read with 144 of the Income Tax Act, 1961 by resorting to best judgement under Section 144 of the Income Tax Act, 1961.

2. It is the specific case of the petitioner is that the petitioner is a HUF and that the main Karta Mr.M.Subramanian died on 15.01.2013. After the death of Mr.M.Subramanian, his son Mr.S.Radhakrishnan filed the returns for the Assessment year 2012-2013 on 06.08.2013. However, no returns were filed for the Assessment Year 2013-2014. At the same time, the petitioner who is the wife of late Mr.M.Subramanian had filed an independent returns for the Assessment Year 2013-2014 and had declared the income of the HUF for the last two months after the death of Mr.M.Subramanian.

3. It is submitted that the impugned order had preceded several notices as detailed in Paragraph 4 of the impugned order, none of them were received either by the petitioner or by her son Mr.S.Radhakrishnan and thus the petitioner has suffered the impugned order. It is submitted that the petitioner may be given a one last chance.

4. On the other hand, the learned Senior Standing Counsel for the respondent would submit that for the purpose of communication the registered Email ID of the petitioner's son namely Mr.S.Radhakrishnan was updated before the Department only on 01.10.2021 as radhakrishnan@maasu.in.

5. It is submitted that even prior to the updation of the aforesaid personal details, notices were sent to the designated email ID which were not replied back by the petitioner HUF. It is submitted that even if the Karta namely Mr.M.Subramaniyan died on 15.01.2013, the status of the HUF did not get disintegrated and it was the responsibility of the surviving coparcener to file the returns and respond to the notices that were issued and since no returns were filed for the Assessment Year

2013-2014, the impugned assessment has been completed under Section 147 read with 144 of the Income Tax Act, 1961. After service of notices has mentioned in para 4 of the impugned order.

6. The learned Senior Standing Counsel for the respondent would draw attention to paragraph No. 8 of the Counter affidavit which reads as under:-

> *"8.I submit that, for the purpose of communication the registered mail id radhakrishnan@maasu.in updated to the department only on 01.10.2020 through the assessee's personal details whereas the notice under Section 148 of the IT Act, 1961 was issued on 06.09.2019 i.e. prior to updation of communication by the assessee. Though the assessee HUF was died, there is a responsibility of the other members of HUF to receive or respond to any communication in the absence of Karta of HUF. In Point No.7 of the Synopsis accompanying to the affidavit filed by the petitioner, stated that the family members of the deceased assessee have been living in the address for the past 25 years and her son Radhakrishnan who himself practising as an advocate and running his office and residing in the adjoin door number in the same premises and also stated that her husband, the assessee concerned, was an MLA of the Erode assembly constituency earlier, Chairman of erode earlier, and as an advocate. From the above, it is very clear that the deceased one is a well-known person to the local and the postal authorities. But the notice u/s 148 issued was returned by the members of HUF since only on the fact that his son, the advocate, himself well aware of*

consequences of the notice u/s 148 of the IT Act, intentionally avoided to receive the communications from the Income Tax Department to evade the tax on the part of the karta of HUF."

7. Heard the learned counsel for the petitioner and the learned Senior Standing Counsel for the respondent.

8. I am of the view, the petitioner can be given one opportunity as there are several factors which have contributed to the passing of the impugned order partly, on account of the death of the Karta on 15.01.2013 and thereafter due to out break of Covid – 19 pandemic. Therefore to balance the interest of the parties, Court is inclined to come to the rescue of the petitioner by quashing the impugned order and remits the case back to the respondent to pass a fresh order on merits. The impugned order which stands quashed shall be treated as addendum to the notices issued to the petitioner as detailed in para 4 of the impugned order.

9. Under these circumstances, there shall be a direction to the respondent to take steps to complete the assessment in accordance with the faceless assessment scheme.

10. This writ petition stands disposed of. No costs. Consequently, connected writ miscellaneous petitions are closed.

21.08.2024

Index : Yes/No
Internet : Yes/No
Speaking Order/Non-Speaking Order
Neutral Citation : Yes/No
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To

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Ward 1(1),
Erode.

C.SARAVANAN, J.

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