IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 09.09.2024

CORAM

THE HON'BLE Mr. JUSTICE KRISHNAN RAMASAMY

W.P.No.26467 of 2024
& W.M.P.Nos.28935 & 28937 of 2024

Rajesh

... Petitioner

Vs.

1.Income Tax Officer,
International Taxation Ward 2(1),
Income Tax Department,
Chennai.

2.Assessment Unit,
National Faceless Assessment Centre,
Income Tax Department, Delhi.

3.Income Tax Officer,
Ward 1, Vellore,
Income Tax Department,
No.2, Barracks Cross Street,
Officers Line, 2nd Floor,
Vellore 632 001.

... 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 of the Respondents contained in its order passed by the 3rd Respondent under Section 148A(d) of the Income Tax Act, 1961 (hereinafter referred to as "the Act"), bearing DIN & Notice No. ITBA/AST/F/148A/2022-23/1051632395(1) dated 30.03.2023 and all proceedings in furtherance thereto including but not limited to the notice issued by the 3rd Respondent under Section 148 of the Act bearing DIN and Notice No. ITBA/AST/S/148_1/2022-23/1051649341(1), dated 30.03.2023, the assessment order passed by the 1 Respondent under Section 147 read with Section 144 of the Act, bearing DIN & Order No.: ITBA/AST/S/147/2024-25/1065042358(1), dated 21.05.2024, the notice of demand issued by the 1st Respondent under Section 156 of the Act, bearing DIN and Notice No. ITBA/AST/S/156/2024-25/1065042438(1), dated 21.05.2024, the notice issued by the 1st Respondent under Section 274 read with Section 270A of the Act, bearing DIN and Notice No.: ITBA/PNL/S/270A/2024- 25/1065042415(1), dated 21.05.2024, and the notice issued by the 1st Respondent under Section 274 read with Section 271AAC(1) of the Act, bearing DIN and Notice No.: ITBA/PNL/S/271AAC(1)/2024-25/1065046156(1), dated 22.05.2024, for assessment year 2019-20, for PAN: AMSPR4521K, and quash the same as arbitrary, unjust, and illegal.

For Petitioner : Mr.Suhrith Parthasarathy

For Respondent : Mr.B.Ramanakumar,
Senior Standing counsel for R1 & R2

Dr.B.Ramaswamy,
Senior Standing counsel for R3

ORDER

This writ petition has been filed challenging the impugned assessment order dated 21.05.2024 passed by the 1st respondent.

2. Mr.B.Ramanakumar, learned Senior Standing counsel takes notice on behalf of the respondents 1 and 2. Dr.B.Ramaswamy, learned Senior Standing counsel takes notice on behalf of the 3rd 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 in the

present case, initially, the respondents had issued a show cause notice dated 21.12.2023, for which, the reply dated 11.02.2024 was filed by the petitioner, who is a Non-Resident Indian. Thereafter, another show cause notice was issued on 21.03.2024 and subsequently, the draft assessment order was also passed on 28.03.2024, whereby, 30 days time was provided to the petitioner for filing his reply. However, due to the demise of the petitioner's wife and the other personal commitments, he was not in a position to file his reply. Under these circumstances, the impugned order dated 21.05.2024 came to be passed by the 1st respondent.

4. Further, he would submit that in the said impugned order, the respondents had classified the petitioner as a “Resident” and demanded tax amount by adding the deposits made in his account as “unexplained investments” and also adding the shares, which were transferred to his account, after the demise of his wife, as “purchase securities”. However, according to the petitioner, since the alleged deposits were made in the Non-Resident Ordinary (NRO) Account and the TDS was already deducted for the said deposits, the petitioner is not liable to pay any tax

amount for the same and since the shares were transferred from his deceased wife's account due to her demise, the same is also not taxable. Without taking all these aspects into consideration, the impugned order came to be passed by the 1st respondent and hence, he seeks an opportunity to explain all these aspects before the concerned Authority.

5. On the other hand, the learned Senior Standing counsel appearing for the respondents would submit that in the present case, the petitioner has failed to file his returns. Based on the information available with the respondents, they issued the show cause notices and passed the draft assessment order dated 28.03.2024, whereby 30 days time was provided to the petitioner for filing reply. However, no reply was filed by the petitioner. Under these circumstances, the impugned assessment order was passed on 21.05.2024. Hence, he requests this Court to pass appropriate orders.

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, it appears that the due to the demise of petitioner's wife, her shares were transferred to the NRO account of petitioner. According to the petitioner, the said transaction is not taxable. Further, it appears that the alleged deposits were made in the Non-Resident Ordinary (NRO) Account of the petitioner, for which, the TDS was already deducted. Hence, the petitioner was under the impression that he is not liable to file any returns. Under these circumstances, the show cause notice dated 21.03.2024 was issued and draft assessment order dated 28.03.2024 was also passed by the respondents. However, due to the demise of his wife and other personal commitments, the petitioner was not in a position to explain these aspects to the respondent. Therefore, the impugned order came to be passed by the 1st respondent on 21.05.2024.

8. Further, it appears that no opportunity of personal hearing was provided to the petitioner prior to the passing of impugned order. Hence, this Court is of the view that the impugned order was passed in violation of principles of natural justice since it is just and necessary to provide an opportunity to the petitioner to establish their case on merits. That apart, the reason assigned by the petitioner for non-filing of reply, appears to be genuine. In such view of the matter, this Court is inclined to provide an opportunity to the petitioner by setting aside the impugned order dated 21.05.2024 passed by the 1st respondent. Accordingly, this Court passes the following order:-

> (i) The impugned order dated 21.05.2024 is set aside and the matter is remanded to the 1st respondent for fresh consideration.
>
> (ii) The petitioner shall file their reply/objection along with the required documents, if any, within a period of three weeks from the date of receipt of copy of this order.
>
> (iii) On filing of such reply/objection by the petitioner, the 1st 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 costs. Consequently, the connected miscellaneous petitions are also closed.

09.09.2024

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

To

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KRISHNAN RAMASAMY.J.,

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