IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 26.09.2024

Coram

The Hon'ble Mr.Justice Krishnan Ramasamy

W.P.Nos.28516, 28521 & 28523 of 2024
and
W.M.P.Nos.31086, 31087, 31089, 31090, 31091 & 31092 of 2024

Dinakaran Vijayalakshmi,
No.22/G, Town Hall 3rd Cross Street,
Arakkonam Town, Vellore District,
TamilNadu, India-631 001. ...Petitioner in all W.P.s'

Vs.

1. Assessment Unit,
Income Tax Department,
National Faceless Assessment Centre,
New Delhi.

2. The Income Tax Officer,
Ward 2, Vellore,
TamilNadu-632 001. ... Respondents in all W.P.s'

Prayer in W.P.28516/2024: This Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari calling for the records in the file of the Respondent and quash the impugned assessment order passed by the First Respondent under Section 147 r.w.s. 144 read with Section 144B of the Income Tax Act, 1961 in PAN BMNPV1537P dated 05.03.2024 in DIN ITBA/AST/S/147/2023-24/1062004636(1) for the AY 2019-20.

Prayer in W.P.28521/2024: This Writ Petition filed under Article 226 of the

Constitution of India for issuance of a Writ of Certiorari calling for the records in the file of the Respondents and quash the impugned penalty order passed by the First Respondent under Section 272A(1)(d) of the Income Tax Act, 1961 in PAN BMNPV1537P dated 03.09.2024 in DIN ITBA/PNL/F/272A(1)(d)/2024-25/1068286741(1) for the AY 2019-20.

Prayer in W.P.28523/2024: This Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari calling for the records in the file of the Respondents and quash the impugned penalty order passed by the First Respondent under Section 271AAC(1) of the Income Tax Act, 1961 in PAN BMNPV1537P dated 30.08.2024 in DIN ITBA/PNL/F/271AAC(1))/2024-25/1068167173(1) for the AY 2019-20.

Appearance of counsel in all W.P.s'

For Petitioner : M/s.N.V.Lakshmi

For Respondents : Dr.B.Ramaswamy
Senior Standing Counsel

COMMON ORDER

These Writ Petitions have been filed by the petitioner, challenging the impugned assessment orders dated, 05.03.2024 and impugned penalty proceedings, dated 30.08.2024 and 03.09.2024 respectively, passed by the first respondent relating the assessment year 2019-2020.

2. Mr.B.Ramaswamy, learned Senior Standing Counsel takes notice

on behalf of the respondents. By consent of the parties, the main Writ Petition is taken up for disposal at the admission stage itself.

3. The case of the petitioner is that she purchased immovable property for Rs.26,72,000/- from and out of the funds of her husband by way of cash and bank transfers which earned by him through legitimate business. However, the petitioner has not filed returns for the assessment year 2019-20 as according to her, there was no income chargeable to tax which exceeds basic limit. Thereafter, the 2nd respondent issued show cause notices under Section 148A(b), dated 25.01.2023, stating that the petitioner had purchased the immovable property, but failed to file returns of income and hence, the income had escaped assessment. The petitioner has not filed any reply to the show cause notices. Thereafter, pursuant to the show cause notices, the 2nd respondent passed order under Section 148A(d), dated 29.03.2023, holding that the case of the petitioner was a fit case for reopening and consequently, issued notice under Section 148 dated 20.03.2023, reopening assessment and called upon the petitioner to file returns of income. Thereafter, the case was transferred to the 1st respondent to complete the assessment in a faceless manner.

4. The 1st respondent issued a notice under Section 142(1) of the Act, requiring the petitioner to furnish specific information and documents pertaining to the assessment year 2019-20 and also sought for details regarding source of income for purchase of the immovable property by the petitioner. Further, the first respondent issued a notices under Section 144 dated 22.11.2023 and 11.12.2023, calling upon the petitioner to show cause as to why the assessment should not be completed based on the information available with him and also as regards additions and variations proposed by it.

5. According to the petitioner, the first respondent without issuing any physical notices to the petitioner, in violation of principles of natural justice, proceeded to pass the impugned assessment order dated 05.03.2024 and raised a demand for Rs.42,82,610/-. Consequently, the 1st respondent proceeded with penalty proceedings under Sections 271AAC(1) and 272A(1)(d) and issued notices dated 05.03.2024, 19.04.2024 and 07.05.2024 and ultimately, vide proceedings under Section 271AAC(1) dated 30.08.2024 and 272A(1)(d) dated 03.09.2024 imposed penalties on the petitioner. Challenging these assessment order and penalty proceedings, the petitioner has come forward with the present Writ Petitions.

6. The learned counsel for the petitioner would primarily contend that the petitioner was unaware of the proceedings due to insufficient communication from the respondent authorities, who sent only technical notices and did not serve them physically and thereby, the entire process was carried out in violation of principles of natural justice and as such, he would submit that the reassessment is arbitrary as no enquiry was done as regards the source of income for purchase of the property. He would also submit that due to lack of understanding of tax procedures, the petitioner has not complied with the requirements mentioned in the notices. Hence, he would urge this Court to extend an opportunity to the petitioner to enable her to submit her reply/objections and pass orders afresh on consideration of the same by the authorities.

7. Dr.B.Ramaswamy, learned Senior Standing counsel appearing for the respondents would submit that the Revenue authorities issued show causes notices and demand order, which were communicated to the petitioner via *e-mail* and also by uploading in the GST portal as per the procedure contemplated under the Rules and the petitioner had failed to appear before the authorities for personal hearing and hence, it cannot be contended that no opportunity was given to the petitioner and passed the impugned order and show cause notices

without hearing the petitioner and lack of knowledge to go through the GST portal and verify the notices and orders, cannot be a ground to quash the proceedings.

8. Heard the learned counsel for the petitioner as well as the learned Senior Standing Counsel for the respondents and also perused the entire materials available on record.

9. In the present case, it appears that the notices have been uploaded in the GST portal and the same were not at all physically served upon the petitioner in order to enable her to make her reply/objections, due to which, the petitioner was unaware about the said notices. Therefore, the impugned assessment order, dated 05.03.2024 has been passed *ex parte*. It is settled law that no adverse order can be passed without providing sufficient opportunity to the party concerned. In the present case, it is admitted fact that no reply/objection was filed by the petitioner and no opportunity of personal was provided to the petitioner, which is in violation of the principles of natural justice. Therefore, taking into account the reasons assigned by the petitioner that being unaware of the proceedings, she could not file her reply and appear before the authorities, which, in the opinion of this Court, warrants interference.

Therefore, in the interest of justice, this Court is inclined to provide an opportunity to the petitioner subject to certain conditions.

10. Accordingly, this Court passes the following orders:

(i) The orders impugned herein are set aside and the matter is remanded to the first respondent for fresh consideration subject to the payment of Rs.700/- each of the Writ Petitions to the credit of **Cancer Institute (Regional Cancer Centre), Adyar, Chennai – 600 020**, within a period of two weeks from the date of receipt of a copy of this order.

(ii) Upon the payment of the aforesaid amount, the petitioner is directed to file reply/objections, if any, within a period of four weeks thereafter.

(iii) On receipt of such reply/objections filed by the petitioner, the first respondent shall consider the same and issue a 14 days clear notice to the petitioner by fixing the date for personal hearing and thereafter, pass appropriate orders on merits and in accordance with law, after hearing the petitioner, as expeditiously as possible.

11. With the above directions, these Writ Petitions are disposed of. No costs. Consequently, the connected miscellaneous petitions are closed.

26.09.2024

Speaking/Non-speaking order
Index : Yes / No
Neutral Citation : Yes / No
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Krishnan Ramasamy,J.,
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