IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 27.09.2024

Coram

The Hon'ble Mr.Justice Krishnan Ramasamy

W.P.No.28765 of 2024
and
W.M.P.Nos.31380 & 31382 of 2024

Mohamedkasim ...Petitioner

Vs.

1. Additional/Joint/Deputy/Assistant Commissioner of Income Tax/Income Tax Officer, National Faceless Assessment Centre, New Delhi.

2. Assistant Commissioner of Income Tax, ACIT, Circle 1, Cuddalore. ... Respondents

Prayer: This Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari, calling for the entire records relating to the impugned order in assessment order in DIN:ITBA/AST/147/2022-23/1051145243(1) dated 21.03.2023 passed by the 1st Respondent and quash the same.

For Petitioner : Mr.T.Ramesh
For Respondents : Mr.V.Mahalingam, Senior Standing Counsel

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ORDER

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

2. An assessment order dated 21.03.2023 is challenged on the ground that such order was issued to a dead person. Pursuant to show cause notice dated 28.10.2022, the impugned assessment order was issued on 21.03.2023. The present writ petition is filed on the basis that the tax payer died prior to the issuance of the impugned order.

3. Learned counsel for the petitioner states the petitioner's father died on 05.09.2018 even prior to the issuance of show cause notice dated 28.10.2022. Consequently, it is stated that neither the petitioner nor the legal heirs could respond to such show cause notice. The Petitioner came to know of the said proceedings only when he received information from the Banks regarding the attachment order. Subsequently, a Notice for rectification proceedings under Section 154 Read with Section 147 of the Income Tax Act, 1961 was also issued, for

which the Petitioner submitted a reply on 23.04.2024 through the portal, informing about the death of the Petitioner's father and sought for an opportunity to explain the case, despite the same, the Respondents issued recovery notice dated 19.07.2024 recovery of arrears of tax confirmed against the deceased person vide the impugned order. Hence the Petitioner has come forward with this Writ Petition seeking for the aforesaid relief.

4. Further, he would submit that his father left behind five class-I legal heirs and the four Legal Heirs have authorized the Petitioner to operate the bank accounts held by their Father to continue to run/manage the business carried by the Petitioner's father and hence the Petitioner has filed this Writ Petition on behalf of other legal heirs.

4. Mr.V.Mahalingam, learned Senior Standing Counsel, accepts notice for the respondents. He submits that the petitioner and the other legal heirs were under an obligation to inform the respondent about the death of the tax payer and to provide details of the legal heirs, immediately after his death. However, she fairly submitted that the

Petitioner informed about the death of his father after issuance of the rectification proceedings.

5. In the present case, it appears that the impugned order dated 21.03.2023 was passed by the respondent against a dead person. In such case, the impugned order is liable to be set aside. Further, since the petitioner is the legal heir of the deceased, it is just and necessary to provide an opportunity to the petitioner to establish his case on merits. In such view of the matter, this Court is inclined to set aside the impugned order dated 21.03.2023 passed by the 1st respondent. Accordingly, this Court passes the following order:-

> (i) The impugned order dated 01.03.2024 is set aside and the matter is remanded to the respondents for fresh consideration.
>
> (ii) The petitioner is directed to provide all the necessary particulars with regard to the legal heirs of the deceased, if any, within a period of two weeks from the date of receipt of copy of this order.
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> (iii) Thereafter, the respondent shall issue a copy of the show cause notice dated 28.10.2022 to the petitioner and other legal heirs of the deceased tax payer.

(iv) Upon receipt of said show cause notice, the petitioner, who is authorised to file this Writ Petition on behalf of other Legal Heirs shall file his reply/objection along with the required documents, if any, treating the aforesaid show cause notice as the notice issued to him and other legal heirs, within a period of four weeks therefrom.

(v) On filing of such reply/objection by the Petitioner, the respondents shall consider the same and issue a 14 days clear notice, by fixing the date of personal hearing, to the legal heirs of the deceased and thereafter, pass appropriate orders on merits and in accordance with law, after hearing the legal heirs of the deceased, as expeditiously as possible.

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

27.09.2024

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

1. Additional/Joint/Deputy/Assistant Commissioner of
   Income Tax/Income Tax Officer,
   National Faceless Assessment Centre,
   New Delhi.

2. Assistant Commissioner of Income Tax,
   ACIT, Circle 1,
   Cuddalore.

Krishnan Ramasamy,J.,

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