2024:MHC:5927

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 23.01.2024

C O R A M

The Hon'ble Mr. Justice **SENTHILKUMAR RAMAMOORTHY**

W.P No.29830 of 2023
&
WMP Nos.29436 & 29437 of 2023

Natarajan Anandh Kumar ... Petitioner

vs.

Assessment Unit
Income Tax Department
Ministry of Finance
Government of India
New Delhi. ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India to issue a writ of Certiorari to call for the records of the impugned proceedings of the respondent in ITBA/PNL/F/271B/2023-24/1058897346(1) dt.06.09.2023 and quash the same.

For Petitioner : Mrs.Hema Muralikrishnan

For Respondent : Mr.V.Mahalingam,
Senior Standing Counsel (Tax)

ORDER

In this writ petition, an order imposing penalty under Section 271 B of the Income-tax Act, 1961 (the Income-tax Act) is assailed.

2. The petitioner was required to subject his books of accounts to audit under Section 44 AB of the Income-tax Act. Since the petitioner failed to submit the audit report in time, proceedings were initiated and such proceedings culminated in the order imposing penalty under Section 271 B of the Income-tax Act.

3. Learned counsel for the petitioner submitted that the petitioner was diagnosed with left sided radiculitis and advised complete bed rest between August, 2018 and October, 2018. Consequently, the petitioner was unable to co-ordinate with his auditor so as to finalize and submit the audit report. Eventually,

such audit report was submitted along with the return of income on 21.04.2022.

4. By referring to paragraph 5 of the impugned order, learned counsel submitted that the conclusion that the audit report was submitted only after issuance of notice under Section 148 of the Income-tax Act with the *mala fide* intention of evading taxes is contrary to the factual position. By pointing out that the petitioner made full disclosure of gross income and paid the entire tax liability by way of deduction of tax at source, learned counsel submitted that the finding in the impugned order calls for interference. Similarly, with regard to the finding recorded at clause (iii) of paragraph 5, learned counsel submitted that it was necessary for the petitioner to co-ordinate with his auditor for purposes of filing the audit report. She further submitted that the conclusion that the ill health of the petitioner was a fabrication is untenable and warrants interference.

5. In response to these contentions, learned senior standing counsel for the respondent, submitted that the petitioner submitted the audit report belatedly not only in this Assessment Year but also in respect of several Assessment Years in the past. In order to substantiate this submission, reliance was placed on the table set out at paragraph 14 of the counter affidavit. Learned counsel also pointed out that the petitioner was unwell between 05.08.2018 and 15.10.2018 and that the return of income and audit report could have been uploaded on the portal up to 31.03.2019. Consequently, he submits that the respondent was fully justified in imposing penalty under Section 271 B of the Income-tax Act. He also submits that an appellate remedy was available to the petitioner and that this Court should not exercise discretionary jurisdiction in favour of the petitioner.

6. The admitted position is that the petitioner was required to submit a tax audit report as per Section 44 AB of the

Income-tax Act within the time limit specified. Such report was admittedly submitted only on 21.04.2022, which is much beyond the prescribed time limit. Section 271B enables the Assessing Officer to impose a penalty equal to one half percent of the total sale, turnover or cost receipts, as the case may be, or the sum of Rs.1,50,000/-, whichever is less. Under Section 273B, no penalty shall be imposable by the Assessing Officer if the failure to comply with the provisions referred to therein was for reasonable cause.

7. In paragraph 5 of the impugned order, it is recorded as under:

> " (i)As per the assessment order passed in this case, the assessee had failed to upload his audit report for the year ended 31.03.2018 within the time limit as prescribed in the Income Tax Act, 1961. As such, the assessee has defaulted in uploading the audit report as per provisions of section 44AB of the I.T. Act, 1961.
> (ii)The assessee has furnished in his reply dated 31.05.2023 stating that he was suffering severe pain over lower back since August 2018, after the

diagnosis IVDP L4-5 with left sided radiculitis and doctor advised him to take complete bed rest for six weeks. For this the assessee has uploaded zerox copies of doctor's prescription dated 05/09/2018 and 15/10/2018. However, it is pertinent to mention here that the assessee filed his ITR for the year under consideration only when he received notice u/s 148 of the I.T. Act and not before the issuance of notice u/s 148 of the I.T. Act which amply proves and shows the malafide intention of the assessee to evade tax on his income for the year under consideration.

(iii) The preparation of income tax return, books of account and audit report is done by the chartered accountant and not by the assessee. Therefore, the plea that the return of income and audit report could not be filed in time due to severe lower back pain of the assessee, appears to be nothing but a fabrication to mislead the penalty proceedings.

(iv) Moreover, it is pertinent to mention here that the assessee filed his return of income after a gap of about four years only when he received notice under section 148 of I.T. Act, 1961. If the case of the assessee was not selected for reassessment proceedings under section 148 of I.T. Act, 1961, the assessee would not have admitted business income to the tune of Rs.18,18,870/- and same would have escaped from taxation. The assessee has failed to mention as to why he filed his return of income after a gap of four years only and reasons which prevented him to file his return of income before the issuance of notice u/s 148 of the I.T. Act.

> (v) Further, the assessee has not filed any appeal against the initiation of penalty proceedings u/s 271B of the I.T. Act, 1961."

8. In clause (ii) of paragraph 5, the Assessing Officer concluded that the filing of the tax audit report belatedly shows the *mala fide* intention of the assessee to evade tax on his income. In view of the fact that the gross income disclosed by the assessee was accepted subsequently by the Assessing Officer and the total tax liability shown in such return was also accepted, the conclusion that the assessee filed the tax audit report belatedly with the *mala fide* intention to evade tax cannot be sustained. In clause (iii) of paragraph 5, the Assessing Officer concluded that the plea that the return of income and audit report could not be filed in time due to severe low back pain of the assessee appears to be a fabrication to mislead the penalty proceedings. In support of the submission that the assessee suffered lower back pain, the impugned order discloses that photocopies of the doctor's prescription was provided. Once again, in view thereof and in

view of the factual position with regard to the return of income, this conclusion cannot be sustained.

9. Thus, the order impugned calls for interference because speculative findings contrary to the facts on record were recorded therein. Therefore, the writ petition is disposed of and the order impugned herein is quashed. As a corollary, the matter is remanded for reconsideration. The Assessing Officer is directed to provide a reasonable opportunity to the petitioner, take into account all material facts and applicable provisions, including Section 273B of the Income-tax Act, and issue a reasoned order within a period of two months from the date of receipt of a copy of this order. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

23.01.2024

Index : Yes/No
Internet : Yes/No
Neutral Citation : Yes/No
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To

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Income Tax Department
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