IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:**29.01.2024**

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THE HONOURABLE **MR.JUSTICE SENTHILKUMAR RAMAMOORTHY**

Writ Petition Nos.30479 & 30484 of 2023
and W.M.P.Nos.30106, 30108, 30116 & 30118 of 2023

Parvathi ... Petitioner in W.P.No.30479 of 2023

Ganesh ... Petitioner in W.P.No.30484 of 2023

-vs-

Assessment Unit,
National Faceless Assessment Centre,
Income Tax Department,
Delhi. ... Respondent in both WPs.

Prayer in W.P.No.30479 of 2023: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari calling for the records of the respondent contained in its assessment order passed under Section 144 read with Section 144B of the Income Tax Act, 1961, bearing DIN:ITBA/AST/S/144/2022-2023/1045179152(1), dated 05.09.2021 and all consequential proceedings including but not limited to the order passed under Section 272A(1)(d) of the Income Tax Act, 1961, bearing DIN:ITBA/PNL/F/272A(1)(d)/2022-2023/1050812653, dated 15.03.2023 and the order passed under Section 270A of the Income Tax Act, 1961, bearing DIN:ITBA/PNL/F/270A/2022-2023/1051047610(1), dated 21.03.2023, for Assessment Year (AY) 2020-2021, PAN:AWUPP7004R and to quash the same as arbitrary, unjust and illegal.

Prayer in W.P.No.30484 of 2023: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari calling for the records of the respondent contained in its assessment order passed under Section 144 read with Section 144B of the Income Tax Act, 1961, bearing DIN:ITBA/AST/S/144/2022-2023/1045747594(1), dated 21.09.2021 and all consequential proceedings including but not limited to the orders passed under Section 272A(1)(d) of the Income Tax Act, 1961, bearing DIN:ITBA/PNL/F/272A(1)(d)/2022-2023/1045749917, dated 21.09.2022 and DIN:ITBA/PNL/F/272A(1)(d)/2022-2023/1049317114(1), dated 01.02.2023 and the order passed under Section 271AAC(1) of the Income Tax Act, 1961, bearing DIN:ITBA/PNL/F/271AAC(1)/2022-

2023/1049448533(1), dated 06.02.2023, for Assessment Year (AY) 2020-2021, PAN:BCSPG5860K and to quash the same as arbitrary, unjust and illegal.

In both WPs.

For Petitioner : Mr.Suhrith Parthasarathy

For Respondent : Dr.B.Ramaswamy
Senior Standing Counsel

COMMON ORDER

In these two writ petitions, which were filed by husband and wife, two separate assessment orders on best judgment basis are assailed. The respective petitioner asserts that he or she, as the case may be, is an agriculturist and that returns of income was filed by the respective petitioner periodically. Upon the respective petitioner filing the return of income for assessment year 2020-2021, the assessments were selected for scrutiny. Based on such scrutiny, notices were issued to the respective petitioner under Sections 142 and 143 of the Income Tax Act, 1961 (the Income Tax Act). The respective petitioner asserts that such notices were not received. Thereafter, show cause notices were issued. Once again, the respective petitioner states that such show cause notices were not received. Eventually, assessment orders were issued on 05.09.2022 in W.P.No.30479 of 2023 and 21.09.2022 in W.P.No.30484 of 2023. The present writ petitions were filed in the above facts and circumstances.

2. Learned counsel for the petitioner contends that the notices and show cause notices issued to the petitioners were not received personally by the respective petitioner. He further submits that only one notice was received physically by the petitioner in W.P.No.30484 of 2023. He also submits that the respective petitioner submitted a return of income in which the entire income was disclosed. He contends that the impugned assessment orders came to be issued because the petitioners did not provide documents evincing that the respective petitioner was entitled to exemption as regards the agricultural income disclosed in the respective return. By placing reliance on the additional typed set of documents filed in the respective writ petition, learned counsel submits that if an opportunity is provided to the respective petitioner, such petitioner would be able to establish that exemption was claimed only in respect of agricultural income.

3. In response to these contentions, Dr.B.Ramaswamy, learned Senior Standing Counsel, submits that no interference is warranted with the impugned assessment orders or proceedings consequent thereto because each petitioner was provided multiple opportunities. By referring to the table at internal page 2 of the respective impugned order, he submits that the opportunities provided to the petitioners are set out therein. As regards the contention that notices were not received by the respective petitioner, he submits that there is proof of delivery of notices by e-mail. Since Section 282 of the Income Tax Act enables service through any of the modes of service prescribed therein, he submits that it is not open to the petitioners to allege non-receipt of notices. He next contended that each petitioner has returned income in crores and that no sympathy should be shown towards the two petitioners, who cannot be treated as poor agriculturists. By also relying upon the written submissions and the judgments referred to therein, Dr.B.Ramaswamy concluded his submissions by contending that the respective petitioner failed to avail of the statutory remedy and that discretionary jurisdiction should not be exercised in their favour.

4. In W.P.No.30479 of 2023, the impugned assessment order records the total income of the petitioner as Rs.2,86,51,080/-. From paragraph 4 of the said order, it is evident that this income was disclosed in the return of income of the petitioner. It is also evident therefrom that the petitioner had claimed that she had incurred expenses of Rs.1,48,56,000/- and that the net agricultural income was Rs.1,35,06,080/-. The said petitioner had not responded to notices issued pursuant to scrutiny and no documents were produced by said petitioner to substantiate the agricultural income or expenses relating thereto. In those circumstances, the gross agricultural receipts of Rs.2,83,62,080/- were added to the returned income so as to compute the income tax liability and penalty thereof.

5. Similarly, in the assessment order in W.P.No.30484 of 2023, there is reference to the return of income and it is recorded that the agricultural income was Rs.5,13,36,954/-. Once again, since no documents were provided to substantiate that such income was indeed agricultural income, the said sum of Rs.5,13,36,954/- was added to the returned income of Rs.3,87,780/- so as to arrive at the total income and the tax liability thereon.

6. From the above discussion, it follows that the respective petitioner disclosed the entire income, including the entire alleged agricultural income. The reason for issuance of the assessment orders is the failure of the respective petitioner to submit documents to substantiate that the income for which exemption was claimed was indeed agricultural income. Learned counsel for the petitioner has placed on record an additional typed set in each writ petition and such additional typed set contains alleged purchase bills with regard to alleged supplies by the respective petitioner. The said additional typed set also contains bank account statements to corroborate alleged receipts against the purchase bills. On account of non submission, none of these documents could be considered by the assessing officer.

7. Although I am not wholly convinced with the explanation regarding non-receipt of notices issued by the Income Tax Department, the fact remains that the entire alleged agricultural income of the respective petitioner was added to the returned income to arrive at the respective petitioner's liability. This was done without considering the genuineness or validity of documents produced now by the respective petitioner to

substantiate that said income is agricultural. If such documents are genuine and valid, there would be miscarriage of justice. Solely for the purpose of providing an opportunity to the respective petitioner to place those documents before the assessing officer for consideration, I am inclined to interfere with the orders impugned herein. In the facts and circumstances, the respective petitioner should be put on terms so as to ensure that such laxity is penalised.

8. Therefore, the respective assessment order and the penalty order under Sections 270A and 271AAC(1) are quashed. Since the respective petitioner was also directed to pay a penalty for non submission of responses to the notices under Section 142(1) of the Income Tax Act, the said penalty shall be paid as a precondition for fresh assessment. The petitioners are directed to pay a sum of Rs.40,000/- each as penalty within a maximum period of two weeks from the date of receipt of a copy of this order. Subject to receipt thereof, the assessing officer is directed to provide a reasonable opportunity to the respective petitioner and issue a fresh reasoned assessment order within a maximum period of six weeks thereafter

in accordance with law. The respective petitioner is directed to extend full co-operation to ensure that the assessment proceedings upon remand are concluded within the time limit specified.

9. The writ petitions are disposed of on the above terms. There will be no order as to costs. Consequently, connected miscellaneous petitions are closed.

29.01.2024

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

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To

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

SENTHILKUMAR RAMAMOORTHY,J

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