IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED**: 03.01.2024**

CORAM

THE HONOURABLE **MR.JUSTICE SENTHILKUMAR RAMAMOORTHY**

W.P.No.35539 of 2023
and W.M.P.No.35498 of 2023

Shiva Jyothi ... Petitioner

-vs-

The Income Tax Officer,
Ward 3 Puducherry,
Puducherry. ... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, pleased to issue a Writ of Certiorari, calling for the records of the respondent contained in Impugned order issued vide DIN & Letter No.ITBA/COM/F/17/2023-24/1057851597(1) dated 09.11.2023 for the assessment year 2015 - 16 passed by the respondent, quash the same as arbitrary, unjust and illegal.

For Petitioner : Mr.Mansoor Ali
for M/s.Sundar Law Associates

For Respondent : Ms.S.Premalatha, Jr.SC (IT)

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ORDER

The petitioner assails an order by which the stay application of the petitioner was rejected. The petitioner asserts that her income does not exceed the taxable limit and that, therefore, she was not under an obligation to file Income Tax returns. Upon receipt of a notice under Section 148 of the Income Tax Act, 1961, it is submitted that the assessment was completed pursuant thereto under assessment order dated 28.03.2023. Consequently, a demand notice was issued for a sum of Rs.42,22,642/- and penalty proceedings was also initiated. In those circumstances, the petitioner assailed the assessment order by filing a statutory appeal before the appellate authority. The stay application was filed in these circumstances before the respondent.

2. Learned counsel for the petitioner contends that the respondent refused to provide a personal hearing in spite of the petitioner requesting for a personal hearing by communication dated 26.10.2023. In fact, learned counsel points out that the reply dated 02.11.2023 and the impugned order dated 09.11.2023 refer to the petitioner's request for a personal hearing. In spite of noticing such request, it is stated that a personal hearing was not granted. Learned counsel further submits that the petitioner would have been in a position to produce documents to establish financial stringency if such personal hearing had been provided. In support of these contentions, learned counsel relies upon earlier orders of this Court with regard to the factors to be reckoned while considering an application for stay.

3. Ms.S.Premalatha, Jr.SC (IT), accepts notice on behalf of the

respondent. She submits that the petitioner was provided an opportunity to file written submissions along with supporting documents. She further submits that the petitioner failed to provide any documents to prove financial difficulties and, therefore, the impugned order does not call for any interference. She further submits that such order was passed in light with the revised instructions issued by the Central Board of Direct Taxes under Office Memorandum dated 31.07.2017.

4. The documents on record disclose that the petitioner requested for a personal hearing by communication dated 26.10.2023. In fact, as contended by learned counsel for the petitioner, the reply of the respondent dated 02.11.2023 and the impugned order refer to the request for a personal hearing. Solely on the ground that the petitioner was not provided a reasonable opportunity, I am inclined to interfere with the impugned order.

5. For reasons set out above, the impugned order dated 09.11.2023 is quashed and the matter is remanded for re-consideration. The respondent is directed to provide a personal hearing to the petitioner, receive any supporting documents filed by the petitioner and thereafter dispose of the stay application by a speaking order. This exercise shall be completed within a maximum period of ***four weeks*** from the date of receipt of a copy of this order. No costs. Consequently, W.M.P.No.35498 of 2023 is closed.

03.01.2024

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

To

The Income Tax Officer,
Ward 3 Puducherry,
Puducherry.

SENTHILKUMAR RAMAMOORTHY,J

rna

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