IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.04.2024

CORAM :

THE HON'BLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

W.P.Nos.154 & 235 of 2024
and
W.M.P.Nos.167, 170, 285 & 287 of 2024

In both WPs.:

Vijayakumar ... Petitioner

Versus

1.Assessment Unit,
Income Tax Department,
Ministry of Finance,
Government of India,
North Bazar,
New Delhi.

2.Income Tax Officer,
Non Corporate Ward 22(4),
Income Tax Department (Business Range),
1st & 2nd Floor, Ramakrishna Street,
West Tambaram, Chennai – 45. ... Respondents

Prayer in W.P.No.154 of 2024 : Writ Petition filed under Article 226 of the Constitution of India pleased to issue a Writ of Certiorari, to call for the records in PAN AIFPV2412C for assessment year AY 2015-2016 and quash the order impugned order u/s. 147 r/w Section 144 r/w Section 144B of the Income Tax Act, 1961 passed by the first respondent in DIN and Order No.ITBA/AST/S/147/2022-23/ 1050644669(1) dated 11.03.2023.

Prayer in W.P.No.235 of 2024 : Writ Petition filed under Article 226 of the Constitution of India pleased to issue a Writ of Certiorari, to call Calling for the records in PAN AIFPV 2412C for assessment year AY 2015 - 16 and quash the Impugned Penalty order ITBA/PNL/F/ 271(1)(c)/2023-24/1056555512(1) dated 26.09.2023 passed by the first respondent.

In both WPs. :

For Petitioner : Ms. G. Vardini Karthik

For Respondents : Mr. Prabhu Mukunth Arunkumar,
Junior Standing Counsel.

COMMON ORDER

An assessment order dated 11.03.2023 and a penalty order dated 26.09.2023, respectively, are under challenge in these writ petitions on the ground that the petitioner did not have a reasonable opportunity to contest the matter on merits.

2. The petitioner is an income tax assessee. In relation to

assessment year 2015-16, a notice under Section 148A(b) of the Income Tax Act 1961, (*I-T Act)* was issued to the petitioner on 22.03.2023. Such notice pertained to alleged escaped income of Rs.53,56,000/-. Since the petitioner did not reply to the notice, an order dated 31.03.2022 was issued under Section 148A(d). This was followed contemporaneously by a notice under Section 148. After issuing notices under Section 142 and a show cause notice, the impugned order was issued.

3. Learned counsel for the petitioner submits that the respondents only took into consideration the credits in the bank account and did not take into account the debits therefrom. If such debits had been taken into account, she submits that the escaped amount would be much less than Rs.50 lakhs. She also raised the contention that the 'income chargeable to tax' and not merely the income should be equal to or more than Rs.50 lakhs.

4. Mr. D. Prabhu Mukunth Arunkumar, learned junior standing counsel, appears on behalf of the respondent. A counter was also filed on

behalf of the respondent. He submits that re-assessment proceedings were duly initiated by complying with all legal requirements in such regard. He also points out that the present writ petitions were filed after the expiry of the prescribed period of limitation. He refuted the contention that the escaped income is less than Rs.50 lakhs by submitting that the respondents are entitled to take into account the entire credits, which were not disclosed, for purposes of reopening the assessment. He also pointed out that the petitioner did not file the return of income.

5. On perusal of the impugned orders, it is evident that the respondents proceeded *ex-parte* because the petitioner did not reply or otherwise participate in proceedings. It is also evident that the aggregate deposits were taken into consideration. The petitioner contends that the debits from the bank account were not taken into consideration and that if such debits were considered, the alleged escaped income would be less than the prescribed minimum threshold of Rs.50,00,000/-. Since the petitioner could not contest the matter on merits earlier, the interest of justice warrants that an opportunity be provided to the petitioner. Since I propose to remand the matter, I do not intend to record any findings with

regard to the legal arguments raised with regard to the scope of Section 149(1)(b) of the I-T Act.

6. For reasons set out above, the impugned orders are set aside and the matter is remanded for reconsideration. The petitioner is permitted to submit a reply to the show cause notice dated 27.02.2023 within 15 days from the date of receipt of a copy of this order. Upon receipt thereof, the first respondent is directed to provide a reasonable opportunity to the petitioner, including a video conference hearing, and thereafter issue a fresh order within four months from the date of receipt of petitioner's reply.

7. In order to enable the petitioner to reply to the show cause notice, the respondents are directed to take necessary action to provide access to the portal.

8. W.P.Nos.154 & 235 of 2024 are disposed of on the above terms. Consequently, the connected miscellaneous petitions are closed. There shall be no order as to costs.

25.04.2024

Index : No
Speaking Order :No
Neutral Case Citation: No

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To

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