



W.P.(MD) No.9727 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 23.04.2024

CORAM

THE HON'BLE MR.JUSTICE C.SARAVANAN

W.P.(MD) No.9727 of 2024

and

W.M.P.(MD)No.8788 of 2024

Suresh Patel, S/o.Nathu Patel

... Petitioner

Vs.

1.Principal Commissioner of Income Tax
(PCIT, Madurai-1),
Income Tax Department, Annexe Building,
V.P. Rathnasamy Nadar Road,
C.R. Buildings, Bibikulam,
Madurai - 625002.

2.Central Processing Unit,
Income Tax Department,
Bangalore.

3.Deputy Commissioner of Income Tax,
Circle 1-(1), Income Tax Department,
Income Tax Complex, Williams Road,
Cantonment, Trichy-1.

... Respondents

Prayer: Writ Petition filed under Article 226 of Constitution of India for issuance of a Writ of Certiorari, to call for the records in the order dated 24.03.2022 passed by the Principal Commissioner of Income Tax, PCIT, Madurai, the 1st respondent herein under Section 263 of Income Tax Act, 1961 and quash the same.



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For Petitioner : Mr.N.Ramakrishnan
for M/s.ARK Law Associates

For Respondents : Mr.N.Dilip Kumar
Senior Standing Counsel
Assisted by
Mr.K.Prabhu
Junior Standing Counsel

ORDER

The petitioner has challenged the impugned order passed by the first respondent on 24.03.2022 under Section 263 of the Income Tax Act, 1961. The impugned order has preceded a show cause notice dated 25.01.2022, to which, the petitioner has replied, which has culminated in the impugned order. Instead of challenging the impugned order before the appellate Tribunal under Section 253(1)(c) of the Income Tax Act, 1961, the petitioner has approached this Court belatedly.

2. The specific case of the petitioner is that his scrutiny assessment was completed on the return of income filed by him on 30.12.2019.

3. The learned counsel for the petitioner would submit that the petitioner has also complied with the order by depositing the differential tax of Rs.1,49,70,000/-. That apart, the petitioner has also paid a further



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sum of Rs.75,00,000/- towards Pradhan Mantri Garib Kalyan Yojana

Scheme [PMGKYS] 2016.

4. It is submitted that long after the petitioner complied with the order, it was not open for the first respondent to invoke Section 263 of the Income Tax Act, 1961, seeking revision of the assessment order passed on 30.12.2019 under Section 143(3) of the Income Tax Act, 1961.

5. The Writ Petition is opposed primarily on the ground that the petitioner had an alternate remedy before the appellate Tribunal under Section 253(1)(c) of the Income Tax Act, 1961. That apart, it is submitted that pursuant to the impugned order dated 24.03.2022, assessment order was also passed under Section 144 read with Section 263 read with Section 144B of the Income Tax Act, 1961, on 24.03.2023 and that a demand notice has also been issued under Section 156 of the Income Tax Act, 1961.

6. It is therefore submitted that the Writ Petition is liable to be dismissed on account of laches and inordinate delay. It is submitted that the submission of the petitioner that the petitioner's case was under



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scrutiny as per Section 143 of the Income Tax Act, 1961 under Computer Aided Selective Scrutiny (CASS), which is attributable to the power of revision under Section 263 of the Income Tax Act, 1961, is wholly wrong. It is submitted that scrutiny assessment order was passed earlier on 30.12.2019 under the mechanism followed under CASS.

7. It is submitted that ample power is vested with the authorities wherever the authorities find that an assessment order passed is erroneous and prejudicial to the interest of the revenue. It is submitted that in this case, the scrutiny assessment order dated 30.12.2019 that was both erroneous and prejudicial to the interest of the revenue and thus, the power was rightly invoked under Section 263 of the Income Tax Act, 1961. It is therefore submitted the Writ Petition lacks merit and therefore, it is also liable to be dismissed.

8. I have considered the arguments advanced by the learned counsel for the petitioner and the learned Senior Standing Counsel for the respondents.



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9. It is noticed that a survey was conducted under Section 133A of the Income Tax Act, 1961 on 14.03.2017. The petitioner had declared Rs.3,00,00,000/- under Pradhan Mantri Garib Kalyan Yojana Scheme [PMGKYS] 2016 and has paid Rs.1,49,70,000/- and deposited a sum of Rs.75,00,000/- under it.

10. It is thereafter, the petitioner filed return on 03.11.2017 declaring a total loss of Rs.2,39,61,352/-, which culminated in the scrutiny assessment order dated 30.12.2019 under Section 143(3) of the Income Tax Act, 1961, for the Assessment Year 2017-2018. It is, in this background, the show cause notice was issued under Section 263 of the Income Tax Act, 1961.

11. The scrutiny assessment order passed under Section 143(3) of the Income Tax Act, 1961, cannot be confused with the impugned order dated 24.03.2022, pursuant to invocation of power under Section 263 of the Income Tax Act, 1961. Therefore, there is no merit in this Writ Petition. Further, the issue involves disputed question of facts, liberty is given to the petitioner to file a statutory appeal before the Appellate Tribunal under Section 253(1)(c) of the Income Tax Act, 1961, within a



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period of 45 days from the date of receipt of a copy of this order. The petitioner is also at liberty to move suitable appeal under the same proviso against the assessment order passed on 24.03.2023 under Section 144 read with Section 263 read with Section 144B of the Income Tax Act, 1961, within such time. The petitioner is also at liberty to move suitable application for staying the operation of the impugned order as also the assessment order passed on 24.03.2023 under Section 144 read with Section 263 read with Section 144B of the Income Tax Act, 1961, along with the proposed appeal.

12. This Writ Petition is disposed of accordingly. No costs. Consequently, connected Miscellaneous Petition is closed.

Index : Yes/ No
Neutral Citation: Yes / No
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23.04.2024

To

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C.SARAVANAN, J.

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