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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **23.04.2024**

CORAM:

THE HONOURABLE MR.JUSTICE **C.SARAVANAN**

W.P.(MD) No.9978 of 2024
and
W.M.P.(MD) Nos.9022 and 9024 of 2024

Rajendran Thendral,
No.443, Bazaar,
Virudhunagar 626 001. ... Petitioner

/vs./

1.The Assessment Unit,
National Faceless Assessment Centre,
Income Tax Department,
New Delhi.

2.The Deputy Commissioner of Income Tax,
Corporate Circle,
Madurai 625 002. ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari, calling for the records of the first respondent in his proceedings in PAN.ABLPT0993P, quash the assessment order dated 15.03.2024 passed therein for the Assessment Year 2016-17.

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For Petitioner : Mr.R.L.Ramani Senior Counsel for
Mr.S.Raja Jeyachandra Paul

For Respondents : Mr.N.Dilip Kumar
Standing Counsel

ORDER

Mr.N.Dilip Kumar, learned standing counsel takes notice for the respondents.

2.In this writ petition, the petitioner has challenged the impugned assessment order dated 15.03.2024 passed by the first respondent pursuant to the remand order passed by the Tribunal on 11.01.2023.

3.The petitioner had earlier suffered an adverse assessment order passed under Section 143(3) of the Income Tax Act, 1961 on 29.12.2017 for the assessment year 2016-17. The dispute pertained to the unaccounted investment in gold and diamond under Section 69A of the Income Tax Act, 1961 for a sum of Rs.72,10,740/-.

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4.The petitioner filed an appeal before the Appellate Commissioner in ITA.No.320/17-18. The Appellate Commissioner, in his order dated 27.09.2019, partly allowed the appeal to the extend of 950 gms of gold out of 2700 gms of gold. The petitioner took up the issue on appeal before the Tribunal in ITA.No. 3427/CHNY/2019.

5.The petitioner's brothers also had been proceeded under similar lines, who had filed similar appeals in ITA.Nos.3428/CHNY/2019 and 3429/CHNY/2019. Before the Tribunal, the petitioner as also one of his brothers (the petitioner in W.P.(MD) No.9980 of 2024) had produced 254 pages of documents to substantiate their case.

6.The Tribunal taking note of the case set aside the orders of the Original Authority as also the first Appellate Authority, namely the Commissioner of Income Tax Appeal with the following observations:-

> *"7.After hearing both the sides and going through the case records and paper-books filed in all the three appeals by different assessees, it is noticed that the assessees have purchased this gold through banking channels or through accounting entries, this needs verification. Hence, all these three appeals are remanded back to the file of the AO and orders of AO as well as the CIT(A) restricting the*

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addition are set aside. The assessees will file all these details before AO, who will verify and examine in detail the source of jewellery as well as explanation. In term of the above, all the three appeals are allowed for statistical purposes.

8.In the result, the appeals filed by the assessees are allowed for statistical purposes."

7.During the interregnum, the order of the Appellate Commissioner was also complied with by giving effect order on 07.11.2019. After the case was remitted back to the Original Authority, namely the first respondent, the petitioner requested the case to be transferred back to the jurisdictional Deputy Commissioner, as the petitioner's brother's case was being taken up by the Deputy Commissioner of the Income Tax, the second respondent herein.

8.The petitioner has sent two representations dated 13.02.2024 and 23.02.2024 with the respective respondents respectively with the request that the case may be transferred to the second respondent. Since the petitioner did not give a reply, the first respondent proceeded to pass the impugned order dated 15.03.2024. Relevant portion for the purpose of this writ petition is reproduced below:-

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"The assessment order U/s 143(3) was passed by the ACIT, CC-1, Madurai, on 29.12.2017 and made an addition of Rs. 72,10,740/-. As per record, the assessee at the time of search could not explain 2700.50 Gram gold in his possession and not submitted any genuine evidence towards source of income for the purchase of 2700.50 grams of gold. The assessee also not filed any W.T.Returns for the A.Y.2010-11 to 2015-16. Thus, in the absence of cogent evidence the unaccounted investment in gold amounting to Rs. 72,10,740/- (2700.50 gm x 2543/- Per Gram as on 17.11.2015 = Rs. 68,67,371/- Plus 5% making charges of Rs.3,43,369/-) was added to the total income of the assessee U/s 69A of I.T.Act, 1961. The Ld.CIT(A) partly allowed the appeal The Hon'ble ITAT, Chennai, vide its ITA No.3427/CHNY/2019 dated 11.01.23 set-aside the case.

A notice U/s 142(1) was issued to the assessee on 28.12.2021 to provide certain information including following details on or before dated 12.01.2024.

1. As per this office record, certain jewellery weighing 2700.50 Gram could not be explained by you at the time of search. Now you are requested to provide details of the same alongwith bills and vouchers of purchase duty verified with payment details.

2.Kindly provide specific bank account with narration regarding above jewellery.

It was found that even after a lapse exceeding one month including adjournment period, no rely has been filed by the assessee except a VC. During the VC, the A/R of the assessee requested for transfer this case to JAO, which was lateron rejected by the NaFAC. Then assessee was again requested to provide required information, but no compliance was made, which proves that the assessee has nothing to say in his favour. Hence, considering the all above facts lying on record and after considering the AO and Id.CIT(A) order, an addition of Rs.72,10,740/- is made U/s 69A of the I.T.Act, 1961.

Penalty u/s 271AAC initiated accordingly."

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9.It is noticed that although the petitioner has participated in the personal hearing through 'video conferencing' before the first respondent, the petitioner has not given proper explanation pursuant to the remand order dated 11.01.2023 of the Tribunal in ITA.No.3427/CHNY/2019. The only submission of the petitioner before the first respondent was that the case may be transferred to the second respondent, as the proceedings against the petitioner's brother’s case pursuant to the remand order were before the second respondent.

10.In my view, the petitioner cannot ask such transfer. However, the fact remains that the petitioner has not explained the purchase of 950 gms of gold, as also the balance of 1715 gms of gold, pursuant to the directions of the Tribunal. Considering the same, I am of the view that the petitioner can be given one more opportunity to explain the same before the first respondent.

11.Under these circumstances, the impugned order passed by the first respondent bearing Ref No.DIN.ITBA/AST/S/143(3)/2023-24/1062664761(1) dated 15.03.2024 is set aside and the case is remitted back to the first respondent to pass a fresh order on merits and in accordance with law within a period of 6

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months from the date of receipt of a copy of this order. The petitioner shall file proper reply explaining the purchase of entire 2700 gms of gold that was found from the petitioner's premises during search. The petitioner shall also file a reply to the show cause notice dated 31.01.2024 within a period of 60 days from the date of receipt of a copy of this order enclosing all the documents. The petitioner shall be heard through 'video conferencing' before fresh order is passed.

12.The Writ Petition stands allowed, accordingly. No costs. Consequently, connected Miscellaneous Petitions are closed.

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C.SARAVANAN, J.

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