BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **10.06.2024**

CORAM:

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.(MD) No.11978 of 2024
and
W.M.P.(MD).Nos.10660 & 10662 of 2024

I.Prema ... Petitioner

Vs.

1.The Principal Commissioner of Income Tax,
O/o. the PCIT,
Madurai – 1,
Central Revenue Building,
Bibikulam, Madurai – 625 002.

2.The Income Tax Officer,
Ward 1, Income Tax Office,
Nellai City Centre,
Tiruchendur Road,
Tahmath Nagar,
Tirunelveli – 627 011. ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari to call for the records pertaining to the impugned order of the 2nd respondent dated 28.02.2024 in DIN & Notice No.ITBA/AST/F/148A/2023-24/1061689477(1) passed under Section 148A(d) and the consequential notice under Section 148 dated 28.02.2024 in DIN & Notice No.ITBA/AST/S/148-1/2023-24/1061694070(1) and quash the same.

For petitioner : Mr.T.Selvan
For respondents : Mr.J.Parekh Kumar
Senior Standing Counsel

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ORDER

The petitioner has approached this Court against the impugned order passed under Section 148(A)(d) of the Income Tax Act, 1961.

2. The impugned order precedes an attempt to serve the notice under Section 148(A)(b) on the petitioner vide notice dated 04.01.2024. However, the said notice was returned with an endorsement “No such address” on 08.01.2024. The respondents, therefore, sent another notice on 23.02.2024 and served the same notice dated 04.01.2024 in the alternate address on the petitioner, which has now culminated in the impugned order dated 28.02.2024 under Section 148(A)(d) of the Income Tax Act, 1961.

3. The learned counsel for the petitioner assails the impugned order on the ground that no opportunity was given to the petitioner to respond on the notice dated 04.01.2024 issued under Section 148(A)(b) of the Income Tax Act, 1961.

4. That apart, it is submitted that the impugned order has been issued/passed without approval of the competent authority.

5. On the contrary, the learned Senior Standing Counsel for the respondents would submit that the petitioner has failed to file returns and therefore, notice was issued, to which, the petitioner sent a reply to the notice for the first time through E-mail on 01.05.2024 and has, thereafter, proceeded to file this Writ Petition on 21.05.2024.

6. It is submitted that there is no final determination. In any event, the petitioner can file the reply and can produce records before the Authority at the time of assessment.

7. Having considered the submissions made by the learned counsel for the petitioner and the Senior Standing Counsel for the respondents, the Court is of the view that although the petitioner has neglected in responding the notice dated 04.01.2024, after it was served on the petitioner on 23.02.2024, the petitioner has to answer to the notice dated 04.01.2024 under Section 148(A)(b) of the Income Tax Act, 1961.

8. Considering the fact that the petitioner is a small assessee, who appears to have sold the property during 2019 and received the consideration and also deposited with the bank for a sum of Rs.57 lakhs, the Court is of the view that the impugned order can be quashed and the case be remitted back to the respondents to pass fresh orders on merits and in accordance with law within a period of two months from the date of receipt of a copy of this order, subject to the petitioner giving a proper reply to the notice dated 04.01.2024 issued under Section 148(A)(b) of the Income Tax Act, 1961 within a period of 30 days from the date of receipt of a copy of this order. The impugned order, which stands quashed, shall be treated as addendum to the impugned order that preceded the show cause notice.

This Writ Petition is disposed of, with above directions. No costs. Consequently, connected miscellaneous petitions are closed.

10.06.2024

Index : Yes / No
Internet : Yes / No
apd

C.SARAVANAN, J.

apd

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