BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **27.06.2024**

CORAM:

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

W.P.(MD) Nos.13936 and 13938 of 2024
and
W.M.P.(MD) Nos.12228, 12230, 12241 and 12243 of 2024

Aravindan Rengaswami
... Petitioner in W.P.(MD) No.13936 of 2024

Geetha Aravindan
... Petitioner in W.P.(MD) No.13938 of 2024

/vs./

The Assistant Commissioner of Income Tax,
International Taxation Circle,
C.R.Building,
No.2, V.P.Rathinasamy Nadar Road,
Viswanathapuram,
Madurai 625 002.
... Respondent in both W.Ps.,

COMMON PRAYER: Writ Petitions filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, calling for the records relating to the impugned Assessment Order passed by the Respondent in DIN and Order No.ITBA/AST/S/147/2024-25/1065065042(1) and

ITBA/AST/S/147/2024-25/1064937610(1) dated 22.05.2024 and 16.05.2024 respectively and the consequential impugned Demand Notice issued by the Respondent in DIN and Notice Nos.ITBA/AST/S/156/2024-25/1065065092(1) and ITBA/AST/S/156/2024-25/1064937696(1), dated 22.05.2024 and 16.05.2024 respectively and quash the same as illegal and arbitrary and consequently, directing the Respondent to consider the objection petition dated 30.04.2024 and 11.04.2024 submitted on behalf of the Petitioners for the pre assessment notice and to pass suitable orders of assessment, accepting the contentions of the petitioners.

For Petitioners
in both W.Ps., : Mr.Veerakathiravan
Senior Counsel for
Mr.P.Saravanakumar

For Respondent
in both W.Ps., : Mr.N.Dilip Kumar
Senior Standing Counsel

COMMON ORDER

The petitioners are the husband and wife, who are before this Court against the respective assessment orders dated 22.05.2024 and 16.05.2024 for the assessment years 2019-20 and 2020-21.

2.The petitioner in W.P.(MD) No.13936 of 2024 is a Non Resident Indian, who has been charged for suppressing the income. The case of the petitioner is that the petitioner is an employee in UAE and that the amounts are not liable to be taxed and that the petitioner had replied to the draft assessment order on 30.04.2024.

3.The case of the petitioner in W.P.(MD) No.13938 of 2024 is also same that the fixed deposit was reinvested after they have matured with the interest accrued thereon and that the respective petitioners had filed an objection with the respondents.

4.It is submitted that the respondents on the other hand have rejected the objections filed by the respective petitioners dated 30.04.2024 and 11.04.2024 on the ground that the petitioners have not filed objections before the Dispute Resolution Panal (DRP) as is contemplated under Section 144C(2) of the Income Tax Act, 1961.

5.The learned Senior Counsel for the petitioners would fairly admits that the respective petitioners have filed appeal before the Appellate Commissioner. However, orders have been passed in violation of principles of natural justice and therefore submits that the petitioners will withdraw their respective appeals filed before the Appellate Commissioner and pursue the remedy in these writ petitions.

6.It is submitted that having admitted that the respective petitioners have filed their objections, it was incumbent on the part of the respondent to give a finding on the same on merits.

7.On the other hand, the learned Senior Standing Counsel for the respondent would submit that as per Section 144C(2)(b) of the Income Tax Act, 1961, objections are to be filed both before the DRP and Assessing Officer. In this case, the petitioners have filed objections only with the Assessing Officer and therefore, there is no error in the impugned assessment order. It is submitted that the petitioners have rightly exercised their options under Section 246A of the Income Tax Act, 1961 by filing appeals before the Appellate Commissioner.

8.It is further submitted that the petitioners have an alternate remedy, which has been rightly invoked by the respective petitioners and therefore, these writ petitions are liable to be dismissed.

9.That apart, it is submitted that the objections of the respective petitioners have also been dealt by the respondent while passing the impugned assessment order and therefore, the impugned orders do not call for any interference.

10.I have considered the arguments advanced by the learned Senior Counsel for the petitioners and the learned Senior Standing Counsel for the respondents.

11.The respective petitioners appear to have entertained a view that the objections with the respondent were sufficient for the purpose of Section 144C(2) of the Income Tax Act, 1961, though the petitioners ought to have filed their objections not only with the respondent but also with the Dispute Resolution Panel. The objections of the petitioners, which has been considered by the respondents, were an incomplete representation by the objections of the petitioners as it ought to have been filed before the Dispute Resolution Panel.

12.Under these circumstances, I am inclined to dispose of these writ petitions by quashing the impugned orders and by remitting the case back to the respondent to pass a fresh order on merits and in accordance with law subject to the respective petitioners filing their objections dated 30.04.2024 and 11.04.2024 with the Dispute Resolution Panel within a period of 15 days from the date of receipt of a copy of this order.

13.Subject to the petitioners filing the objections before the Dispute Resolution Panel, the assessment shall be completed in accordance with Section 144C of the Income Tax Act, 1961. It is made clear that in case the petitioners fail to file their objections before the Dispute Resolution Panel within such time, the respondent is at liberty to proceed against the petitioners in the manner known to law, as if this order has not been passed.

14.The submission of the learned Senior Counsel for the petitioners that the petitioners will withdraw their respective appeals filed before the Appellate Commissioner stands recorded.

15.The Writ Petitions stand allowed, accordingly. No costs. Consequently, connected Miscellaneous Petitions are closed.

Index : Yes / No
Internet : Yes / No
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27.06.2024

C.SARAVANAN, J.

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