BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 04.07.2024

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THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.(MD).No.14604 of 2024
and
W.M.P(MD)Nos.12800, 12801 & 12803 of 2024

Palaniappan Vijayalakshmi ... Petitioner

Vs.

1.The Assistant Commissioner of Income Tax,
International Taxation Circle,
Madurai Income Tax Office-Madurai,
No.2, VP Rathinasamy Nadar Road,
CH Building, Bibikulam,
Madurai-625 002.

2.Income Tax Officer,
Ward 1, Karaikudi,
Income Tax Office-Karaikudi,
Ground and First Floor,
Sekkalai Street,
Karaikudi-630 002. ... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, to call for the records contained in notice, dated 13.03.2024 bearing ITBA/AST/F/148A(SCN)/2023-24/1062528641(1) issued by the 2nd respondent under Section 148A(b) of the Income Tax Act, 1961 and all consequential proceedings thereto, including order, dated 30.03.2024 bearing ITBA/AST/F/148A/2023-24/1063706515(1) issued by the 1st respondent under Section 148A(d) and the consequential notice, dated 30.03.2024 bearing ITBA/AST/S/148_1/2023-24/1063706673(1) issued by the 1st respondent under Section 148 and to quash the same as arbitrary, illegal and unjust.

For Petitioner : Mr.Suhrith Parthasarathy

For Respondents : Mr.N.Dilipkumar
Standing Counsel

ORDER

In this writ petition, the writ petitioner has challenged the impugned notice issued under Section 148 (A) (b) of the Income Tax Act, dated 13.03.2024, order passed under Section 148A (d) on 30.03.2024 and notice issued under Section 148 of the Income Tax Act on 30.03.2024 for the assessment year 2017-18.

2. The case of the petitioner is that the petitioner is a permanent resident of Canada and an NRI and he is assessed to tax in Canada. It is submitted that the notice, dated 13.03.2024 issued under Section 148A (b) of the Income Tax Act, 1961 was transmitted to the petitioner by e-mail only on 21.03.2024 and the time given for reply was 22.03.2024, to which the petitioner had also

replied on 22.03.2024 electronically. However, the impugned order, dated 30.03.2024 under Section 148 (A) (d) of the Income Tax, 1961 has been passed and impugned notice under Section 148 has been issued. It is submitted that there is a manifest violation of principles of natural justice.

3. The learned counsel for the petitioner submits that the impugned order may be set aside, so that a speaking order can be passed afresh. It is further submitted that after the impugned order and notices were issued, the petitioner had also sent a representation to the 1st respondent on 01.05.2024 which has not revoked any response. Hence, the petitioner is constrained to file this writ petition as otherwise the respondents will finalize the assessment pursuant to the notice issued under Section 148 of the Income Tax Act on 30.03.2024. The learned counsel for the petitioner further submits that in the income tax portal, none of the notices that have been impugned in this writ petition were displayed and therefore, the petitioner also has a technical handicap in participating the assessment proceedings.

4. On the other hand, the learned Standing Counsel for the respondents would submit that the writ petition is devoid of merits in as far as the petitioner

ought to have filed regular returns and responded in time. It is further submitted that the writ petition to be dismissed by asking the petitioner to participate in the assessment proceedings. It is submitted that no prejudice has been caused to the petitioner by mere passing of the order under Section 148A (d) of the Income Tax Act, 1961 on 30.03.2024.

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

6. The receipt of reply to notice, dated 13.03.2024 issued under Section 148A (b) of the Income Tax is not in dispute. The said reply has been sent by the petitioner electronically on 22.03.2024. However, the impugned order states that the petitioner has not submitted any explanation. It appears that the petitioner had responded to the notice under Section 148A (b), dated 13.03.2024 to the 2nd respondent and thus, the reply, dated 22.03.2024 sent electronically was not communicated to the 1st respondent. Therefore, this is a fit case for interfering with the impugned order, dated 30.03.2024 passed under Section 148A (d) of the Income Tax Act, 1961 and the impugned notice, dated

30.03.2024 under Section 148 of the Income Tax Act, 1961. Under these circumstances, the impugned order and the notice, dated 30.03.2024 are quashed and the case is remitted back to the file of the 1st respondent to pass a fresh orders on merits and in accordance with law.

7. This writ petition is disposed of by giving liberty to the petitioner to file additional reply, if any, within a period of two (2) weeks from the date of receipt of copy of this order. The impugned order, dated 30.03.2024 passed under Section 148A (d) of the Income Tax Act, 1961 shall be treated addendum to show cause notice, dated 13.03.2024 issued under Section 148A (d) of the Income Tax, 1961. The respondents are directed to ensure that the technical issues in the portal are clear for the petitioner to upload the reply. The 1st respondent shall pass orders on merits and in accordance with law as expeditiously as possible.

8. In view of the above, this Writ Petition stands disposed of. No costs. Consequently, connected Miscellaneous Petitions are closed.

04.07.2024

NCC : Yes / No

Index : Yes / No
Internet : Yes
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To

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C.SARAVANAN, J.

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