BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **23.07.2024**

CORAM:

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.(MD) Nos.16664 & 16665 of 2024
and
W.M.P.(MD)Nos.14427, 14429, 14433 & 14435 of 2024

In W.P.(MD)No.16664 of 2024
Senthil Trading and Co.
Represented by its Proprietor S.Rameshkumar. ... Petitioner

Vs.

The Assessing Officer,
O/o. The Income Tax Officer,
Income Tax Department-Ward 2(1),
Trichy-Main Building,
Williams Road, Contonment,
Tiruchirappalli – 620 015. ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari to call for the records relating to the impugned Assessment Order dated 22.01.2024, passed by the respondent in DIN No.ITBA/AST/S/147/2023-24/1059984231(1) and the consequential impugned demand notice dated 22.01.2024, issued by the respondent in DIN & Notice No.ITBA/AST/S/156/2023-24/1059984307(1), for the assessment year 2018-19 and quash the same as illegal.

For petitioner : Mr.Veerakathiravan, Senior Counsel
for P.Saravanakumar

For respondent : Mr.N.Dilip Kumar
Senior Standing Counsel

In W.P.(MD)No.16665 of 2024
Senthil Trading and Co.
Represented by its Proprietor S.Rameshkumar. ... Petitioner

Vs.

The Assessing Officer,
O/o. The Income Tax Officer,
Income Tax Department-Ward 2(1),
Trichy-Main Building,
Williams Road, Contonment,
Tiruchirappalli – 620 015. ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari to call for the records relating to the impugned Assessment Order dated 25.01.2024, passed by the respondent in DIN No.ITBA/AST/S/147/2023-24/1060132625(1) and the consequential impugned demand notice dated 25.01.2024, issued by the respondent in DIN & Notice No.ITBA/AST/S/156/2023-24/1060132676(1), for the assessment year 2019-20 and quash the same as illegal.

For petitioner : Mr.Veerakathiravan, Senior Counsel
for P.Saravanakumar

For respondent : Mr.N.Dilip Kumar
Senior Standing Counsel

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COMMON ORDER

By this common order, these two Writ Petitions are taken up for disposal.

2. The petitioner, claiming itself as a Proprietary concern, is before this Court against the respective assessment orders as detailed below:

S.No.	W.P.(MD)Nos.	Assessment Year	Impugned order/date
1.	16664 of 2024	2018-19	DIN No.ITBA/AST/S/156/2023-24/1059984231(1) dated 22.01.2024
2.	16665 of 2024	2019-20	DIN No.ITBA/AST/S/147/2023-24/1060132625(1) dated 25.01.2024

3. The specific case of the petitioner is that the Senthil Trading and Co., was initially a Partnership Firm between the deponent's father namely Subramanian Chettiyar, his younger brother namely Senthil Kumar and the deponent and that with effect from 31.03.2007, the said Partnership Firm discontinued the business and the business was carried on by the deponent Ramesh Kumar as the Proprietor.

4. It is farily submitted that the Partnership Firm was unregistered one and no intimation was given to the Income Tax Department that the said firm ceased to exist and the business was taken over by the deponent in his individual

capacity.

5. The learned Senior Counsel for the petitioner would also submit that the the deponent was himself assessed to income tax in his individual capacity as the Proprietor of the said Partnership Firm and was filed regular Returns with the PAN No.AKWPR0604F.

6. It is submitted that no business was carried on by the Partnership Firm bearing Pan No.ABHFS6206J after the deponent took over the business of the Partnership Firm with effect from 31.03.2007.

7. It is submitted that the business was carried on earlier by the Partnership Firm and thereafter, taken over by the deponent as the Proprietor of the said Senthil Trading and Co. at Gandhi Nagar Market, No.23, Sub-Jail Road, Mailam, Trichy – 620 008 and that due to congestion, the market was shifted from the aforesaid address to Pal Pannai, Chennai Bye-pass Road, Trichy and that the notices that were attempted to be served at the said address in Gandhi Nagar Market, No.23, Sub-Jail Road, Mailam, Trichy -620 008 remained unserved.

8. It is submitted that the said PAN No. ABHFS6206J was also not in use and therefore, the notices, that were sent electronically, were not noticed by the petitioner or by the Auditor and therefore, no reply was given before the impugned order came to be passed.

9. The learned Senior Counsel for the petitioner has placed reliance on a decision of this Court rendered in W.P.No.25812 of 2022 dated 29.08.2023 in the case of ***Shri Renga Fabrications Private Limited vs. The Additional/Joint/Deputy/Assistant Commissioner of Income Tax/Income-Tax Officer,*** wherein, it was observed as under:

> *"10. Clearly the Impugned Order dated 27.03.2022 is unsustainable as the notice which preceded the Impugned Order have been sent to the E-Mail ID which was no longer in use as BSNL has stopped providing services from April 2019.*
>
> *11. Considering the above, the Impugned Order dated 27.03.2022 is set aside and the case is remitted back to the respondents to issue a proper notice under Section 148A(b) of the Income Tax Act, 1961. In view of the above, the consequential penalty notice issued under Section 271(1)(c) of the Act on 03.08.2022 & 04.08.2022 is also stands quashed. The respondents shall pass order under Section 148A(d) of the Income Tax Act, 1961 within a period of twelve (12) months from the date of receipt of a copy of this order."*

10. The learned Senior Counsel for the petitioner submits that the petitioner may be given one opportunity to explain the case afresh. According to the learned Senior Counsel for the petitioner, the petitioner has been mulcted with unjust tax liability.

11. On the other hand, the learned Senior Standing Counsel for the respondent submits that the submission of the learned Senior Counsel for the petitioner that the notices were not received by the petitioner for the PAN No. ABHFS6206J cannot be countenanced in view of the regular Returns filed by the deponent in his individual name with PAN No. AKWPR0604F from the same address.

12. It is submitted that the Return has been filed with the same address at No.23, Sub-Jail Road, Mailam, Trichy – 620 008 and therefore, the argument of the learned Senior Counsel of the petitioner that the petitioner did not receive the notices that preceded the impugned orders for the respective assessment years cannot be countenanced.

13. That apart, a reference is made to the content of the impugned order, which reflects the fact that no return was filed under PAN No. ABHFS6206J, despite heavy transaction in the Bank Account.

14. It is submitted that huge transactions have been made to one A.R.R.Poovaraghavan and that the said A.R.R.Poovaraghavan had received a sum of Rs.752.32 lakhs from M/s.Senthil Trading and Co.

15. It is further submitted that apartfrom the above amount the said A.R.R.Poovaraghavan had also received a sum of Rs.5,00,000/- was also received from the deponent from his individual Bank Account with Syndicate Bank and therefore, the arguments that the petitioner was exposed to unjust tax cannot be countenanced. Hence, prays for dismisal of this Writ Petition.

16. That apart, it is submitted that the notices were also send through speed post on 18.09.2023 and was served at the said address on 05.10.2023. It is therefore submitted that there is no merits in the present Writ Petition.

17. It is submitted that since there was no participation, the impugned orders have been passed by invoking Section 147 read with Section 144 read with Section 144B of the Income Tax Act, 1961 by resorting best assessment.

18. The learned Senior Standing Counsel for the respondent further submits that the decision relied by the learned Senior Counsel for the petitioner in the case of ***Shri Renga Fabrications Private Limited*** (cited supra) is not applicable to the facts of this Case as the Court was concerned with totally different situation.

19. Having considered the submissions made by the learned Senior Counsel for the petitioner and the learned Senior Standing Counsel for the respondent, the Court is of the view that the petitioner has neglected in not intimating the alleged dissolution of the Partnership Firm on 31.03.2007 and that not surrending the PAN obtaining for the Partnership Firm with PAN No. ABHFS6206J. Transactions have been made from the account maintained in the name of the Partnership Firm, which allegedly became a Proprietary concern of the deponent. There are also indications that the Returns filed by the deponent in

his individual capacity is from the same address, for which the PAN was obtained in the name of the Partnership Firm. That apart, there appears to be a huge transactions.

20. Since there was no reply to the notices issued by the respondent, the respondent cannot be found faulted in passing the order under Section 144 read with Section 147 of the Income Tax Act, 1961. Since the petitioner is also assessed to tax individually with the PAN No. AKWPR0604F, the matter would require a detail consideration.

21. Under these circumstances, the Court is inclined to come to the rescue of the petitioner by giving an opportunity to the petitioner to file an appropriate reply to the notices that preceded the respective impugend orders.

22. The impugned orders, which stand quashed, shall be treated as addendum to the show cause notices that preceded the respective impugned orders.

23. The petitioner shall, however, pre-deposit a sum of Rs.50,00,000/- (Rs.25,00,000/- each) to the credit of the Income Tax Department within a period of eight weeks from today. The petitioner shall file reply within a period of six weeks from today and deposit the said amount within a priod of two weeks thereafter.

24. The respondent shall thereafterproceed to pass final orders on merits and in accordance with law as expeditiously as possible preferably within a period of six months from the date of receipt of a copy of this order.

25. The petitioner shall co-operate with the respondent and shall produce the records for perusing the Returns filed in his individual capacity. It is made clear that in case the petitioner files to co-operate with the respondent, the respondent is at liberty to proceed against the petitioner.

26. It is made clear that in case the petitioner fails to pre-deposit the aforesaid amount within the time stipulated above, this order will stand revoked *sine die* and it shall be deemed that these Writ Petitions were dismissed *in limine* today.

These Writ Petitions are disposed of with above directions. No costs. Consequently, connected miscellaneous petitions are closed.

23.07.2024

Index : Yes / No
Internet : Yes / No
apd

C.SARAVANAN, J.

apd

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