BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 28.08.2024

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THE HONOURABLE MR. JUSTICE MOHAMMED SHAFFIQ

W.P.(MD).No.19256 of 2024
and
W.M.P.(MD).Nos.16327 and 16328 of 2024

Veerappan Karuppiah ... Petitioner

Vs.

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

2.Deputy/Assistant Commissioner of Income Tax,
Non Corporate Circle-1,
No.2, V P Rathinasamy Nadar Road,
Madurai - 625 002,
Tamil Nadu. ...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 on the file of the 1st and 2nd respondents and quash the impugned order no.1 passed under section 147 r.w.s. 144B of the Income Tax Act, 1961, in DIN and Order No.ITBA/AST/S/147/2023-24/1061662469(1) dated 28.02.2024 for the AY 2019-20 by the 1st respondent and the impugned notice no.1 under section 148 of the Act in DIN and Notice No.ITBA/AST/S/148_1/2022-23/1051434405(1) dated 27.03.2023 for the AY 2019-20 issued by the 2nd respondent and the impugned order no.2 passed under section 148A(d) of the Act in DIN and Order No.ITBA/AST/F/148A/2022-23/1051433780(1) dated 27.03.2023 for the AY 2019-20 by the 2nd respondent and the impugned notice no.2 issued under Section 148A(b) of the Act in DIN and Notice No.ITBA/AST/F/148A(SCN)/2022-23/1050514798(1), dated 08.03.2023 for the AY 2019-20 by the second respondent.

For Petitioner : Mr.J.Saravanan
For Respondents : Mr.N.Dilip Kumar
Senior Standing Counsel

ORDER

The present Writ Petition is filed challenging the following impugned orders and notices for the assessment year 2019-2020, viz.,

(i) Notice issued under Section 148A(b) of the Income Tax Act dated 08.03.2023,

(ii) Order passed under Section 148A(d) of the Act dated 27.03.2023,

(iii) Notice issued under Section 148 of the Act dated 27.03.2023 and

(iv) Assessment order passed under Section 147 read with 144B of the Act dated 28.02.2024.

2. It is submitted by the learned counsel for the petitioner that the petitioner was engaged in the business of coconut trading activity. That only

during the previous year relevant to the assessment year 2019-2020, the petitioner was not engaged in any works contract activity. It was further submitted that a show cause notice dated 08.03.2023 was issued under Section 148A(b) of the Act, wherein, a sum of Rs.23,26,000/- was treated as cash deposits and the petitioner was required to furnish details with regard to the same. The petitioner filed his reply *inter alia* stating that the cash deposit of Rs. 23,26,000/- in the bank account represents not only trading, but personal transactions. It was submitted that in any view, even if the entire cash deposit is offered under Section 148A(d), there would no tax liability. Hence, the assessment proceedings initiated on the premise that income has escaped assessment, may be dropped. However, while passing the impugned order under Section 148A(d) of the Act, the Assessing Authority, on verification of the bank accounts, found that the petitioner has only withdrawn Rs.23,26,000/- while claiming the same to be trading receipts. Thereafter, reference was made to four different accounts and the withdrawals and deposits in those accounts, while proceeding to find that large amount of deposit and withdrawal was made. It was further stated in the impugned order that the claim of the petitioner in the computation of income statement that Rs.23,26,000/- is the trading receipt for the financial year 2018-2019 and calculating income tax under Section 44AA, was unacceptable. The petitioner is stated to have failed to prove the source of cash credits in banks with supportive evidence and thus, the same is to be treated as undisclosed income and assessed to tax as escaped income for the assessment year 2019-2020.

2.1. However, while proceeding to frame the assessment under Section 147 read with 144B, the Assessing Authority has proceeded to treat the above sum once again as cash deposits instead of withdrawal. It was thus submitted that the impugned order of assessment suffers from error apparent on the face of record and the same cannot be sustained.

3. The learned Senior Standing Counsel for the respondents would agree that the impugned order does suffer from the above error and thus, the matter may be remanded back for redoing the assessment under Section 147 of the Act.

4. In view thereof, the challenge to the impugned order under Section 148A(d) of the Act dated 27.03.2023 is rejected. However, the consequential impugned order of assessment under Section 147 read with Section 144B of the Act dated 28.02.2024 is set aside and the respondents/authorities are directed to re-do the assessment in accordance with law after affording a reasonable

opportunity of hearing to the petitioner from the stage of notice under Section 148 of the Act.

5. Accordingly, the Writ Petition stands disposed of. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

28.08.2024

Index : Yes / No
Internet : Yes/ No
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To
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MOHAMMED SHAFFIQ, J.

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