BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 10.09.2024

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THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P(MD)No.21469 of 2024
and
W.M.P(MD)Nos.18156 & 18157 of 2024

L.Rajendrapandian ... Petitioner

Vs.

The Commissioner of Income Tax (Appeals),
Office of the Commissioner of Income Tax,
Appeal, Income Tax Department,
Chennai-19. ... Respondent

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, calling for the records pertaining to the impugned order passed by the respondent in DIN & Order No:ITBA/APL/S/250/2024-25/1067134547(1), dated 30.07.2024 and quash the same and pass such further or other orders as this Court.

For Petitioner : Mr.T.Bashyam

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

ORDER

The present writ petition has been filed challenging the order under Section 250 of the Income Tax Act, 1961, by the Commissioner of Income Tax, Appeal, whereby the challenge made to the order passed under Section 143(3), of the Income Tax Act, dated 31.03.2015 was rejected on the premise that the petitioner had not responded to any of the notices issued by the Appellate Authority nor let-in any evidence except for raising grounds of appeal.

2. The petitioner is an individual engaged in the business of retail trading of gold, silver and other precious stones. The petitioner filed a return of income for 2012- 2013 by admitting an income of Rs.2,03,06,770/- on 30.09.2021. Subsequently, he filed a revised return on 29.01.2014 by admitting an income of Rs.2,08,93,510/- for the assessment year 2012-2013. The return of the petitioner was selected for scrutiny under CASS. Notice was issued under Section 143(2) of the Income Tax Act, dated 07.08.2013. A survey was also carried out at the business premises of the petitioner on 01.11.2011. During the course of survey, certain stock discrepancy of gold jewelry and silver was noticed. The survey team found there was an excess stock of gold to the tune of

8628.658 grams and silver of 79886.955 grams. On the basis of the above stock variation noticed during the course of inspection, additions were made. The petitioner filed an appeal challenging the order under Section 246 A of the IT Act. The appellate authority had issued the following notices:

Sl.No.	Notice issued	Date of Notice	Date of Compliance	Response
01.	Notice u/s 250 of the Act	26.10.2023	08.11.2023	No response
02.	Notice u/s 250 of the Act	06.02.2024	12.02.2024	No response
03.	Notice u/s 250 of the Act	14.03.2024	22.03.2024	No response
04.	Notice u/s 250 of the Act	13.05.2024	21.05.2024	No response
05.	Notice u/s 250 of the Act	29.05.2024	29.05.2024	No response

3. However, the petitioner had not responded to any of the notices. The Appellate Authority proceeds to record that though the appellant has raised grounds of appeal, he has not chosen to submit any evidence before the Appellate Authority to substantiate the grounds raised and therefore, confirmed the order of the Assessing Authority. The Appellate Authority also observed that the burden is on the assessee, who would have to demonstrate that the findings of the survey were erroneous, which the petitioner miserably failed. Thus the Appellate Authority dismissed the appeal finding that the appellant has not shown any interest in pursuing the appeal after filing and raising grounds.

4. The learned Counsel for the petitioner would submit that the petitioner was unable to attend the hearing before the Appellate Authority only in view of the fact that there was change in the chartered accountant some time in 2023 and the chartered account has not informed about the appeal, resultantly, the notices were not responded to by the petitioner. It was further submitted that the petitioner may be granted an opportunity to put-forth his case before the Appellate Authority. It was also submitted that the Appellate Authority has merely extracted the grounds of appeal but has not dealt with the same on merits and thus, the impugned order is liable to be set aside.

5. To the contrary, it was submitted by the learned Senior Standing Counsel for the respondent that more than 5 notices were issued to the petitioner and they have not responded. The change in the chartered accountant cannot be cited as a reason for non-appearance, i.e., something which is an internal matter, which the assessee ought to sort out.

6. At this juncture, it is further submitted by the learned Counsel for the petitioner that the Appellate Authority has not examined on the merits and the impugned order is also erroneous inasmuch as the Appellate Authority has recorded a finding that no evidence has been let-in in support of the ground raised. In response to the same, it was submitted by the Senior Standing Counsel for the respondent that in the absence of any evidence having been let-in to demonstrate the additions, the Appellate Authority cannot be found fault with for confirming the order of assessment inasmuch as the burden is on the assessee to demonstrate that the findings in the survey were not justified by letting-in evidence. It was also submitted by the learned Senior Standing Counsel for the respondent that a statutory remedy by way of an appeal before the Tribunal under Section 253 of the IT Act was also available to the petitioner against the impugned order.

7. Heard the learned Counsel on either side.

8. This Court find that there is merit in the submission of the learned Senior Standing Counsel for the respondent inasmuch as the petitioner having chosen to avail a statutory remedy cannot change courses midway. If the petitioner is aggrieved by the order of the Appellate Authority, the same ought to be challenged by way of a statutory appeal and this Court is of the view that the petitioner having not participated in the proceedings before the Appellate

Authority, the submissions of the petitioner finding fault with the Appellate Authority in confirming the order of assessment is clearly un-justified. It is for the assessee to come forward and let-in evidence to show how the orders of assessment are bad. However, the petitioner had not appeared before the Appellate Authority nor let-in evidence as evident from the order of the respondent [Appellate Authority], wherein it has been observed that despite grant of sufficient opportunity no evidence has been let-in by the petitioner to demonstrate that the finding in the assessment are bad.

9. In view thereof, the writ petition challenging the impugned order, dated, 30.07.2024 is dismissed. The petitioner if so advised may challenge the same before the appellate Tribunal. There shall be no order as to costs. Consequently, connected Miscellaneous Petitions stand closed.

10.09.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes
BTR

To

The Commissioner of Income Tax (Appeals),
Office of the Commissioner of Income Tax,
Appeal, Income Tax Department,
Chennai-19.

MOHAMMED SHAFFIQ, J.

BTR

W.P(MD)No.21469 of 2024

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