BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 18.09.2024

CORAM

THE HONOURABLE MR. JUSTICE MOHAMMED SHAFFIQ

W.P.(MD)No.22129 of 2024
and
W.M.P.(MD)Nos.18732 and 18733 of 2024

V.Venkatesan Huf ... Petitioner

Vs.

Ward No.1,
Office of the Income Tax Officer,
Income Tax Department,
Karaikudi-19. ...Respondent

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 pertaining to the impugned order passed by the respondent in DIN and Notice No. ITBA/AST/F/148A/2023-24/1061058036(1) dated 16.02.2024 and consequential notice in DIN and Notice No. ITBA/AST/S/148_1/2023-24/1061060561(1) dated 16.02.2024 and quash the same.

For Petitioner : Mr.T.Bashyam

For Respondent : Mr.N.Dilip Kumar
Sanding Counsel

ORDER

The Writ Petition is filed challenging the impugned order dated 16.02.2024 passed by the respondent relating to the assessment year 2020-2021. The present writ petition is filed challenging the order passed under Section 148A (d) dated 16.02.2024 and consequential notice under Section 148 dated 16.02.2024 on the premise that the petitioner has not been granted an opportunity of personal hearing to put forth his explanation/response to the notice issued under Section 148A of the Income Tax Act.

2. The petitioner is the HUF and engaged in money lending business and the petitioner has filed return of income to the assessment year 2020-2021 on 30.12.2022. A notice under Clause (b) to Section 148 A of the Income Tax Act dated 13.12.2023 was issued wherein it was stated that the petitioner had made cash deposit to the tune of Rs.30,00,000/- but had not filed in its return for the assessment year 2020-2021. The petitioner submitted his reply to the above notice vide his letter dated 19.01.2024 wherein it was submitted that the notice only referred to certain cash transaction, but failed to make note of the deposits made through transfers. It was further submitted that a perusal of the bank account would show that the deposits made through the bank were withdrawn by cash and thereafter redeposited through cash. The respondent authority,

however, had proceeded to reject the above objection on the premise that the petitioner had not let in any evidence in support of his money lending business evidencing the source of cash deposit for the financial year 2019-2020. Hence, the sources for cash deposit was found to be remained unexplained. It was thus found that it was a fit case to issue notice under Section 148 of the Income Tax Act. Pursuant to that notice which has been issued under Section 148A of the Incomet Tax Act, the present writ petition has been filed challenging the impugned order passed under Section 148A(d) of the Act on the ground that the petitioner ought to have been granted a personal hearing and failure to provide a personal hearing, results in violation of the mandate under Section 148A of the Income Tax Act.

3. Heard both side and perused the materials placed before this Court.

4. It was submitted by the learned Standing counsel for the respondent that the petitioner while submitting his reply had not made any request for personal hearing. If a request for personal hearing was made and the same was not granted, the petitioner may have something to argue.

5. However, this is a case where the petitioner had not even made a request of personal hearing and thus the plea of personal hearing cannot be countenanced. The impugned order passed under Section 148A of the Income Tax Act has been questioned on the ground of non-grant of the personal hearing. It was also submitted by the learned counsel for the respondent that in any view, the notice has been issued under Section 148 of the Income Tax Act and it is still open to the petitioner to place his objection along with the relevant documentary evidence which would be considered at the time of passing order in the assessment proceedings under Section 147 of the Income Tax Act.

6. This Court finds that there is merit in the submission of the learned counsel for the respondent. The filing of the writ petition at the present stage viz., on issuance of notice under Section 148 of the Act pursuant to an order under Section 148A(d) of the Act, is premature. It is open to the petitioner to place his objection along with the reply to the notice under Section 148 of the Income Tax Act during the course of assessment proceedings under Section 147 of the Income Tax Act along with the documentary evidence. It is needless to say that if the petitioner submitted his objection along with the documentary evidence, the same shall be considered by the respondent authority and thereafter they shall pass orders.

7. With the above observations, the Writ Petition stands disposed of. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

18.09.2024
(1/2)

Index : Yes / No
Internet : Yes/ No
PJL

To
Ward No.1,
Office of the Income Tax Officer,
Income Tax Department,
Karaikudi-19.

MOHAMMED SHAFFIQ, J.

PJL

W.P.(MD).No.22129 of 2024

18.09.2024