BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 21.03.2024

CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

WP(MD)No.21481 of 2023
and
WMP(MD)Nos.17873, 26822 of 2023

Abu.Shamima Parveen .. Petitioner

v.

The Income Tax Officer,
Ward 1, Karaikudi – 630 002. .. Respondent

PRAYER: Petition filed under Article 226 of the Constitution of India seeking issuance of a Writ of Certiorari calling for the records relating to the order passed by the respondent u/s.148A(d) of the Income Tax Act, 1961, vide DIN & Notice No.: ITBA/AST/F/148A/2022-23/1051815564(1), dated 31.03.2023 and the consequent notice issued u/s.142(1) of the Act vide DIN:ITBA/AST/F/142(1)/2023-24/1054862846(1), dated 04.08.2023 and quash the same.

For Petitioner : Mr.Mahaboob Athiff
for Mr.K.Anbuchelvam

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

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ORDER

As against the order passed by the respondent u/s.148A(d) of the Income Tax Act, 1961, dated 31.03.2023 re-opening the assessment and the consequent notice issued u/s.142(1) of the Act, dated 04.08.2023, this writ petition is filed by the petitioner.

2.Learned Counsel appearing for the petitioner submitted that before re-opening the assessment, an approval has to be obtained from the competent authority. In this case, though approval was granted by the competent authority, it is a non-speaking order and no reason has been assigned for re-opening the assessment. He further submitted that the petitioner has submitted a reply on 26.07.2023, however, the same was not taken into account stating that the order u/s.148A(d) of the Act was already passed on 31.03.2023.

3.He further submitted that the petitioner is a Home-Maker and her husband is working in Abroad. She has purchased the property from her husband's income and also by availing loan from a Nationalized Bank. Both are exempted from being considered as a taxable income. However, the respondent, without appreciating the same and without hearing the petitioner, has re-opened the assessment. The respondent has issued notice to an address at Karaikudi, where the petitioner used to reside long back. The petitioner is having valid grounds and therefore, the learned Counsel insisted for providing an opportunity to the petitioner by considering her representation dated 26.07.2023 before passing order u/s.148A(d) of the Act.

4.Learned Senior Standing Counsel appearing for the respondent / Department submitted that notices were issued to the Karaikudi address registered with the petitioner's PAN. They have also issued another notice to the petitioner's Chennai address, which was mentioned in her sale deed. Both these notices were returned as door locked and therefore, the respondent has proceeded further as per Section 148A and re-opened the assessment.

5.He further submitted that this is only at the initial stage and further opportunity will be available to the petitioner to file her response and at that point of time, the objections, if any, of the petitioner would be considered by the respondent. The petitioner has, in fact, filed her revised return of income on 22.07.2023 and an enquiry before assessment notice was issued calling upon the petitioner for enquiry on 04.08.2023. At this stage, the petitioner has filed this writ petition and obtained an interim order of stay. Therefore, the Department could not proceed further.

6.By relying upon the decision of the Hon'ble Supreme Court in ***Anshul Jain v. Principal Commissioner of Income Tax*** [***(2022) 289 Taxman 239 (SC)***], learned Counsel submitted that if the petitioner is having any grievance on merits, the same has to be agitated before the respondent in the re-assessment proceedings.

7.This Court considered the rival submissions made on either side and perused the available materials.

8.The grievance of the petitioner is that the petitioner was not provided with an opportunity before re-opening the assessment. A notice was sent to the address registered with the petitioner's PAN and also to the address shown as the petitioner's residential address in her sale deed. The petitioner claims that she is not residing in any of these addresses and has failed to avail the opportunity. The petitioner appears to have made a detailed reply on 26.07.2023, however, by then, the order dated 31.03.2023 re-opening the assessment has already been passed and therefore, her reply dated 26.07.2023 could not be considered by the respondent.

9.It is the case of the petitioner that she purchased an immovable property at Chennai for a sale consideration of Rs.1,57,00,000/- vide Doc.No.4060 of 2015 on the file of the Sub Registrar, Neelangarai, Chennai, on 28.05.2015. Of the total sale consideration, a sum of Rs.1,20,00,000/- was sourced through housing loan from ICICI Bank and the balance sum of

Rs.37,00,000/- was received from her husband, who was a tax non-resident living abroad and earning income from consultancy assignments from Muscat, Oman and Atyrau, Kazakhstan. According to her, these are foreign source income having no tax liability in India. It is her further case that she is a Home Maker and since she purchased the property without earning any taxable income, she did not file any returns at that time and now, pursuant to the proceedings, she has filed the returns.

10.Be that as it may, the issue is at the stage of enquiry and the petitioner would be provided with an opportunity of personal hearing. The arguments advanced by the petitioner has to be considered at the time of enquiry by the respondent.

11.In view of the above position and in view of the decision of the Hon'ble Supreme Court in ***Anshul Jain***'s case (supra), this writ petition stands disposed of, with liberty to the petitioner to approach the respondent along with required materials. The respondent shall consider the case of the petitioner, the points raised by her in the reply dated

22.07.2023 and thereafter, pass appropriate orders, on merits and in accordance with law, after affording due opportunity of personal hearing to the petitioner.

There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

Index	:	Yes / No	**21.03.2024**
NCC	:	Yes / No	
Internet	:	Yes	

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B.PUGALENDHI, J.

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WP(MD)No.21481 of 2023

21.03.2024