BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 14.10.2024

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THE HONOURABLE MR. JUSTICE MOHAMMED SHAFFIQ

W.P.(MD).No.23871 of 2024
and
W.M.P.(MD).Nos.20202 and 20205 of 2024

Munuvar Basha ... Petitioner

Vs.

1.The Union of India,
Through the Secretary,
Ministry of Finance,
Department of Revenue,
New Delhi.

2.The Commissioner of Income Tax,
National Faceless Assessment Centre,
Delhi,
India.

3.The Income Tax Officer,
Ward 1(1) Trichy,
Trichy. ...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 pertaining to the impugned assessment order passed by the 2nd respondent dated 16.01.2024 and quash the same as unconstitutional.

For Petitioner	:	Mr.J.Sivaram
For R-1	:	Mr.P.Subbiah Central Government Standing Counsel
For R-2 & R-3	:	Mr.N.Dilipkumar Senior Standing Counsel

ORDER

The present Writ Petition is filed challenging the impugned order dated 16.01.2024, whereby, the sale consideration received towards sale of immovable property and a motor vehicle was subjected to capital gains.

2. It is submitted by the learned counsel for the petitioner that the impugned order suffers from several infirmities including some, which are factual. It is submitted that the impugned order of assessment requires to be reconsidered as it is contrary to the facts on record.

3. To the contrary, it was submitted by the learned Senior Standing Counsel for the second and third respondents that though several opportunities were granted to the petitioner to put forth his case, he has not availed any of the opportunities. The petitioner having not been vigilant, the Writ Petition ought not to be entertained, more so, when there is an effective alternative remedy by way of appeal.

4. This Court finds that the impugned order itself records the details of the opportunities, which have been provided to the petitioner, as evident from the Table below:

3.Details of opportunities given

Type of notice/ communication	***Date of notice/ communication***	***Date of compliance given***	***Response of the assessee received/ not received***	***Date of response if received***	***Response type (Full/part/ adjourn - ment)***	***Remarks if any***
Notice U/s.148 of the Act	*06/04/2022*	*Within 30 days*	*Not Received*	*NA*	*NA*	*Served*
Intimation letter for procedure of Section 144B of Income Tax Act	*21/01/2023*		*Not Received*	*NA*	*NA*	*Intimation to assessee that assessment will be conducted as per procedure of section 144B. Served*
Notice u/s. 142(1) of the Act	*07/06/2023*	*13/06/2023*	*Not Received*	*NA*	*NA*	*Served on Email*
Notice U/s. 142(1) of the Act	*02/08/2023*	*09/08/2023*	*Not Received*	*NA*	*NA*	*Served on Email*
Reminder letter	*04/09/2023*	*5 days*	*Not Received*	*NA*	*NA*	*AU-1 Reminder for compliance to notice u/s. 142(1). Served on Email*
Centralized communication	*18/09/2023*	*-*	*Not Received*	*NA*	*NA*	*Sent through*

Sent by Speed Post No.JA277249470IN						*Speed Post No.JA277249470IN*
SCN for144	*06/10/2023*	*11/10/2023*	*Not Received*	*NA*	*NA*	*Served on Email*
SCN	*05/01/2024*	*11/01/2024*	*Not Received*	*NA*	*NA*	*Served on Email*

5. In view thereof, this Court does not find any reason to interfere with the impugned order of assessment.

6. At this stage, the learned counsel for the petitioner would submit that subsequent to passing of impugned order of assessment, a sum of Rs.4.5 lakhs has been recovered from the petitioner and would request that the petitioner may be granted liberty to file an appeal, which was not objected to by the learned counsel for the respondents.

7. In view thereof, the Writ Petition stands disposed of granting liberty to the petitioner to file an appeal before the appropriate authority within a period of three (3) weeks from the date of receipt of a copy of this order. If any such appeal is filed within the above stipulated period, the same shall be entertained without reference to limitation subject to complying with all other conditions relating to filing of appeal and orders shall be passed in accordance with law

after affording a reasonable opportunity of hearing to the petitioner. It is also open to the petitioner to move an interim application for stay before the Appellate Authority or the Assessing Authority. If any such stay application is filed, while considering the same, the payment made by the petitioner subsequent to the order of assessment shall also be taken into account. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

14.10.2024

Index : Yes / No
Internet : Yes/ No
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To
1.The Secretary,
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Ministry of Finance,
Department of Revenue,
New Delhi.

2.The Commissioner of Income Tax,
National Faceless Assessment Centre,
Delhi,
India.

3.The Income Tax Officer,
Ward 1(1) Trichy,
Trichy.

MOHAMMED SHAFFIQ, J.

Lm

W.P.(MD).No.23871 of 2024

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