BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 14.11.2024

CORAM

THE HON'BLE MR.JUSTICE K.KUMARESH BABU

W.P.(MD)Nos.27262 & 27263 of 2024
and
W.M.P(MD)Nos.23077 to 23082 of 2024

W.P(MD)No.27262 of 2024:

Kalaivani ... Petitioner

Vs

The Assessment Unit,
Income Tax Department,
Ministry of Finance, New Delhi ...Respondent

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, to issue a writ of Certiorari, calling for the records of the respondent relating to the assessment order passed u/s.143(3) read with section 144B of the Income Tax Act, 1961 dated 11/03/2024 in DIN ITBA/ AST/S/143(3)/2023-24/1062379566(1) for the assessment year 2022-23 and quash the same.

W.P(MD)No.27263 of 2024:

Kalaivani ... Petitioner

Vs

The Assessment Unit,
Income Tax Department,
Ministry of Finance, New Delhi ...Respondent

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, to issue a writ of Certiorari, calling for the records of the respondent relating to the Penalty Order passed u/s.271AAC of the Income Tax Act, 1961 dated 02/09/2024 in DIN: ITBA/PNL/F/271AAC(1)/2024-25/1068256638(1) for the assessment year 2022-23 and quash the same.

For Petitioner	:	Mr.T.Vasudevan (in both WP's)
For Respondent	:	Mr.N.Dilip Kumar Standing Counsel (in both WP's)

COMMON ORDER

The challenge to the writ petition is that the assessment order based upon the complete scrutiny and the consequential penalty proceedings.

2.The learned Counsel appearing for the petitioner would submit that no opportunity had been granted to the petitioner and notice was sent through E-mail where all the email addresses of the Income Tax practitioner of the petitioner and that the Income Tax Practitioner had not informed the petitioner about issuance of notice, had sought time for submitting explanation and therefore, the petitioner was not aware of the proceedings pursuant to the assessment order had been made.

3.He would further submit that without any materials available, order of assessment had been made and therefore, he would seek this Court indulgence to set aside the order and remit the matter back to the authorities by affording an opportunity to the petitioner to make her submission and contest the case.

4.Countering his arguments, the learned Standing Counsel would submit that notice dated 18.09.2023 was sent by the registered post to the petitioner and there was no reply to the said notice. The petitioner had sought further time, under reply dated 22.09.2023 by further 15 days to submit all the records. In spite of which, the petitioner had not chosen to submit the records and only after a period of six months, the order of assessment had been made. Therefore, the impugned order cannot said to be an order passed without issuing notice to the petitioner. He would further submit that even to the E-mail, the Income Tax practitioner of the petitioner had submitted his reply with bank statement attached. In this context, he would submit that without petitioner's authorisation the bank statement could not have been received by ITP for submission. Hence he would submit that the petitioner was aware of the proceedings.

5.I have carefully considered the rival submission made on either side and perused the materials available on record.

6.The primary contention of the learned Counsel appearing for the petitioner is that no notice had been served, but as pointed out by the learned Standing Counsel for the respondent, the notice dated 18.09.2023 had been sent by speed post to the address of the petitioner for which a reply had also been emanated from her side on 22.09.2023. Hence, this itself is suffice to hold that the petitioner was aware of the proceedings.

7.Hence, I am satisfied that there is no violation of the principal of the natural justice in the proceedings initiated against the petitioner pursuant to impugned assessment order and the penalty proceedings had been made. Therefore, I do not find any merits in entertaining this writ petition. However, considering the fact that the time period for filing an appeal had expired and the assessment order had been uploaded in the portal. If an appeal is filed by the petitioner could be rejected on the question of delay, thereby the petitioner has valuable statutory rights of appeal available under the Act would suffer.

8.In such view of the matter, if the petitioner files an appeal before the appropriate authority within a period of four weeks from today, the appellate authority shall take the appeal on file without insisting the application for condonation of delay in filing the appeal.

9.The penalty proceedings shall be kept in abeyance till the period of four weeks from today and if the appeal is not filed within the said time, further proceedings can also be initiated both under the assessment order as well as in the order imposing penalty. If the appeal is filed, the implementation of the penalty proceedings shall be subject to the result of any interim application that had been made by the petitioner.

10.With the above said liberty, these writ petitions stand disposed of. No costs. Consequently, connected miscellaneous petitions are also closed.

14.11.2024

NCC : Yes/No
Index : Yes/No
Internet: Yes/No
RJR

K.KUMARESH BABU, J.

RJR

To

The Assessment Unit,
Income Tax Department,
Ministry of Finance, New Delhi

W.P.(MD)Nos.27262 & 27263 of 2024

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