IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 17.02.2025
Coram

The Honourable **Mr.Justice Krishnan Ramasamy**

W.P.No.5016 of 2025
and
W.M.P.Nos.5563 & 5564 of 2025

Meenakshisundaram Ganeswari ...Petitioner

Vs.

Assessment Unit
Faceless Assessment Department
Income Tax Department,
2nd Floor, E-Ramp,
Jawaharlal Nehru Stadium
New Delhi – 110 003. ...Respondent

Prayer

Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari to call for records of the respondent leading to issuance of impugned order dated 08.01.2025 vide ITBA/AST/S/147/2024-25/1072000846(1) and to quash the same.

For Petitioner : Mr.K.M.C.Arun Mokan

For Respondent : Dr.B.Ramaswamy,
Senior Standing Counsel

Order

Heard Mr.K.M.C.Arun Mokan , learned counsel appearing for the petitioner and Dr.B.Ramaswamy, learned Senior Standing Counsel, who takes notice on behalf of the respondent. With consent, the main Writ Petition is taken up for final disposal at the stage of admission itself.

2. The challenge in this Writ Petition is to the order passed by the respondent dated 08.01.2025 and to quash the same.

3. The learned counsel for the petitioner would submit that the respondent issue a show cause notice on 02.12.2024, to which, the petitioner filed reply on 17.12.2024, thereafter, the respondent issued another notice dated 27.12.2024, fixing the personal hearing dated on 31.12.2024, however, since the petitioner was suffering due to high blood pressure and other health related ailments at that point of time, and even his Accountant is also pre-occupied with professional commitments, the petitioner sought for an adjournment, however, the respondent without acceding such a request made by the petitioner, passed the impugned order without granting an opportunity of personal hearing to the petitioner and added to that, the respondent has observed in the impugned order that the petitioner has failed to reply to the personal hearing notice dated 27.12.2024, which is not true.

3.1 Therefore, the learned counsel would submit that the impugned order suffers from violation of principles of natural justice and is liable to be aside,

4. The learned Senior Standing Counsel for the respondent strongly opposed to the contentions putforth by the petitioner by contending that the show cause notice was issued on 02.12.2024, reply was filed on 07.12.2024, thereafter, notice affording personal hearing opportunity was granted to the petitioner was issued on 27.12.2024, since, the petitioner failed to appear, the impugned order has been passed. Further, it is contended that, in terms of Section 148 (b) of the Act, an Assessing officer has to give time not less than seven days but not more than 30 days to the assessee for furnishing his/her explanation, and in the present case, there is no violation of such provision. Therefore, it is contended that the petitioner, on her own, invited the order, and when she having failed to utilize the opportunity granted to her, she cannot have a say that no fair opportunity of hearing was provided. However, the learned Senior Standing Counsel fairly submitted that in the event, this Court is inclined to set aside the impugned order, some condition may be imposed on the petitioner.

5. I have given due considerations to the submissions made on either side and perused the materials available on record.

6. In the case on hand, the respondent issued a notice under Section 148 A (b) of the Income Tax Act, proposing to re-assess the returns filed by the petitioner for the AY 2019-20 dated 26.06.2024, which was later followed by another notice dated 02.07.2024, seeking to furnish various documents pertaining to the AY 2019-20, to which, the petitioner submitted a reply dated 15.07.2024, along with all documents. Later, i.e after a period of four months, the respondent issued a show cause notice dated 02.12.2024 proposing to levy tax for alleged variations in the returns, to which, the petitioner filed reply dated 17.12.2024. Thereafter, the respondent issued a personal hearing notice dated 27.12.2024, fixing date of hearing on 31.12.2024 and since the petitioner failed to appear on the said date, the impugned order came to be passed.

6.1 However, the fact remains that, the petitioner, on receipt of personal hearing notice dated 27.12.2024, sought for an adjournment, as she was suffering from high blood pressure at that point of time and added to that, the petitioner's Accountant was also pre-occupied with professional commitments, hence, the petitioner was not in a position to appear before the respondent. Pausing here for the moment, this Court would like to point out that, had it been the real intention of the respondent-Income Tax Department, to give fair opportunity of hearing to the petitioner, they ought to have re-fixed the schedule of personal hearing on some other date considering the plight of the petitioner, who was suffering from ill-health due to blood pressure, whereas, the respondent, without acceding to such request made by the petitioner straight away proceeded to confirm the proposals contained in the show cause notice and passed the impugned order by observing in the impugned order that the petitioner has failed to reply to the personal hearing notice dated 27.12.2024, which is fallacious.

6.2 Therefore, this Court is of the view that the impugned order suffers from violation of principles of natural justice as the petitioner has not been heard prior to the passing of impugned order. Further, in a case, where, the taxpayer is an individual assessee, the respondent-Department should adopt a pragmatic approach since it is just and necessary to provide an opportunity to the petitioner/asesseee to establish their case on merits. Therefore, the contention of the learned Senior Standing Counsel for the respondent that sufficient opportunity was granted to the petitioner, it was the petitioner, who failed to utilize the same and the petitioner, on their own invited the order has to be brushed aside, when admittedly, the petitioner requested the Department to have personal hearing on some other date citing her health reasons. Thus, this Court is inclined to set aside the impugned order, however, while doing so, simultaneously, imposes certain condition on the petitioner.

i) The impugned order dated 08.01.2025 passed by the respondent is set aside and the matter is remanded to the respondent for fresh consideration, however, the same is subject to the payment of a sum of Rs.10,000/- by the petitioner to the Principal Government Naturopathy Medical College and Hospital, Account No.7883022723, IFSC Code: IDIB000M157, within a period of four weeks from the date of receipt of copy of this order and the setting aside of the impugned order will take effect from the date of payment of the said amount.

ii) In the event, the petitioner intends to file additional reply, the same shall be filed along with relevant documents within a period of two weeks thereafter.

iii) In case, additional reply, if any, is filed, the respondent is directed to consider the same and after affording an opportunity of personal hearing to the petitioner shall redo the assessment in accordance with law.

7. In the result, the Writ Petition is allowed on the aforesaid terms. No costs. Consequently, connected Miscellaneous Petitions are closed.

17.02.2025

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Index : yes/no
Neutral Citation : yes/no

To
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Income Tax Department,
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New Delhi – 110 003.

Krishnan Ramasamy,J.,

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