IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.03.2025

CORAM

THE HONOURABLE MR. JUSTICE S.S. SUNDAR

AND

THE HONOURABLE MR. JUSTICE C.SARAVANAN

WA.No.640/2025 & CMP.Nos.5171 & 5172/2025

Dhanapal Eswari ... Appellant

Vs.

1.The Income Tax Officer
Ward-1, Perambalur,
Perambalur Income Tax Office
No.71, Deena Dayalan Complex,
1st Floor, Venkatesapuram
Perambalur 621 212.

2.The Assessment Unit
Income Tax Department
national Faceless Assessment Centre
4th Floor, Mayur Bhawan
Connaught Lane, Connaught Place
New Delhi 110 001. ... Respondents

Prayer : Writ Appeal filed under Clause 15 of Letters Patent against the order passed in WP.No.10107/2024 dated 14.10.2024.

For Appellant : Mr.G.Baskar

For Respondents : Dr.B.Ramasamy
Senior Standing counsel

JUDGMENT

[Delivered by S.S.SUNDAR, J.,]

(1)This appeal is directed against the order of the learned Single Judge dated 14.10.2024 in WP.No.10107/2024.

(2)Brief facts that are necessary for the disposal of this writ appeal are as follows:

(3)The appellant is engaged in the business of distribution of gas cylinders and gas stoves. It is her case that she was filing the Return of Income and Tax Audit Report. However, it is also admitted that due to some personal issues and unavoidable circumstances, she failed to file the Return of Income Tax for the Assessment Year 2018-19. Therefore, the 1st respondent issued a show cause notice to the appellant to which the appellant also sent a reply vide letter dated 30.03.2022 along with CBDT e-challan for e-tax payment and the statement of Income for the Assessment Year 2018-19. The appellant also requested the 1st respondent to issue notice under section 148 of the Income Tax Act, 1961 [hereinafter referred to as 'the Act'] in order to enable her to file the Return of Income. However, the 2nd respondent passed an order on 07.04.2022 under Section 148A[d] of the Act and issued a notice dated 07.04.2022 under Section 148 of the Act.

(4)It is stated that the appellant came to know about the notice dated 07.04.2022 only when she received an Intimation Letter dated 06.02.2023 from the Income Tax Department. Issuance of notice dated 07.04.2022 is admitted. However, the reason for the said notice not reaching the appellant is that there was a change in the e-mail ID of the appellant. It is the case of the appellant that the change of e-mail ID was duly intimated to the Department. Taking note of the circumstances, the learned Single Judge quashed the impugned order and remitted the matter back to the 2nd respondent for fresh consideration on condition that the appellant should pay 15% of the disputed tax amount within a period of three weeks.

(5)Learned counsel for the appellant submitted that the condition imposed by the learned Single Judge to pay 15% of the disputed tax amount is arbitrary having regard to the facts admitted and established before the learned Single Judge. He further submitted that the appellant is doing business in distribution of gas cylinders and gas stoves and therefore, the huge liability on the basis of the business turnover of the appellant, cannot be justified.

(6)This Court having regard to the nature of dispute and the facts admitted is of the view that the order of the learned Single Judge quashing the order and remitting the matter to the 2nd respondent is perfectly in order. However, the condition attached with the order is not proper as the liability was not assessed based on facts admitted. If the appellant is burdened to pay 15% of the disputed tax amount which is very high, serious prejudice will be caused to the appellant. Instead, the 2nd respondent can be directed to dispose of the matter on merits within a period of four weeks without any precondition.

(7)Accordingly, the writ appeal is partly allowed and the order of the learned Single Judge dated 14.10.2024 made in WP.No.10107/2024 is modified removing the condition alone regarding payment of 15% of disputed tax amount. The impugned order passed by the 2nd respondent is quashed and the matter is remitted back to the 2nd respondent for fresh consideration on merits. The 2nd respondent shall pass final order on merits after hearing the parties and adhering to the principles of natural justice within a period of four weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petitions are closed.

[S.S.S.R., J.] [C.S.N., J.]
17.03.2025

AP

Internet : Yes

To
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