IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 24.03.2025
Coram
The Honourable **Mr.Justice Krishnan Ramasamy**

W.P.No.9747 of 2025
and
W.M.P.Nos.10920 & 10922 of 2025

Selvi ...Petitioner

Vs.

1. The Assessment Unit,
Income Tax Department
National Faceless Assessment Centre,
4th Floor, Mayur Bhawan,
Connaught Lane, Connaught Place
New Delhi – 110 001.

2. The Principal Commissioner of Income Tax -1
63, Race Course Road, Coimbatore – 641 018. ...Respondents

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 impugned assessment order dated 22.12.2023, bearing DIN : ITBA/AST/S/147/2023-24 1058997346(1) of the first respondent and to quash the same and further to direct the first respondent to pass a fresh assessment order for the year Assessment Year 2016-17 after providing an opportunity of personal hearing and to produce the evidence with consequential relief.

For Petitioner : Mr.R.Anish Kumar

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

Order

Heard Mr.R.Anish Kumar learned counsel appearing for the petitioner and Dr.B.Ramaswamy, learned Senior Standing Counsel, who takes notice on behalf of the respondents. 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 first respondent dated 22.12.2023 and to quash the same and further to direct the first respondent to pass a fresh assessment order for the year Assessment Year 2016-17 after providing an opportunity of personal hearing to the petitioner.

3. The learned counsel for the petitioner would submit that the petitioner is a transgender and is engaged in the business of cooking biriyani in large scale for various functions viz. Domestic, political, social etc., for her livelihood; that for the sake of running the business, she borrowed certain amount and deposited the same in her account on various dates; that since she is not a regular income tax assessee, she has not filed returns for the AY 2016-17, however, her case was selected for scrutiny and she has been issued with notices/communications, which, she was completely unaware and only when she received a notice with regard to the bank attachment, it was only thereafter, she came to know of the impugned assessment order, thenceforth, she has been filing returns promptly without any default

3.1 Hence, the learned counsel prays for setting aside the impugned order, inasmuch as, the impugned order suffers from violation of principles of naturals, as the petitioner has not been heard before passing the impugned order, and submits that if an opportunity is granted to the petitioner to file reply and participate in the proceedings, certainly, she would be able to satisfy the respondents with supportive evidence.

4. The Senior Standing Counsel for the respondent though raised strong objection for setting aside the impugned order, however, fairly submitted that she being a trans gender and subsequent to the attachment order, she is filing returns regularly, subject to certain terms, the impugned order may be set aside.

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

6. The petitioner is a transgender, engaged in the business of selling Biriyani in large scale for various functions. In course of her business, the petitioner borrowed certain amounts and deposited the same in her bank account on various dates. She, being non-tax payer, she is not aware of the notices/communications issued by the respondent, Income Tax Department and the impugned order passed against her and the moment, her bank account came to be attached by her banker she became aware of the impugned order passed against her and initiation of recovery proceeding initiated by the respondent-Department, thenceforth, she has been filing returns regularly without any default.

6.1 In the light of the aforesaid facts and circumstances of the case, coupled with the further fact that the petitioner, being a transgender, amidst facing several discriminations and challenges in the Society (of-course, such discrimination is not shown by the respondent-Income Tax Department) is decently eking out her livelihood by doing own business, (i.e. selling Biriyani) this Court is inclined to set aside the impugned assessment order, inasmuch as, the same is an ex parte order passed without hearing the petitioner and is to grant an opportunity of hearing to the petitioner so as to enable the petitioner to substantiate her case since she is stated to have certain documents in her possession in support of her claim.

6.2 Accordingly, this Court is inclined to pass the following orders/directions

i) The impugned order dated 22.12.2023 passed by the first respondent is set aside.

ii) Consequently, the matter is remanded to the concerned Authority for fresh consideration, however, the same is subject to the condition that the petitioner makes a payment of a sum of Rs.10,000/- to the Principal Government Naturopathy Medical College and Hospital, having Account No.7883022723, IFSC Code: IDIB000M157, within a period of two weeks from the date of receipt of copy of this order.

(iii) After complying with the aforesaid condition, the petitioner shall file their reply/objection along with the required documents, which the petitioner stated to have in her possession, within a period of 30 days from the date of receipt of copy of this order.

(iv) Since the assessment order is passed by the respondent, Faceless Assessing Officer, the respondent-Income Tax Department is directed to keep open the on-line portal so as to enable the petitioner to file reply and adduce documents.

(v) On filing of such reply/objection by the petitioner, the respondent concerned shall consider the same and issue a 14 days clear notice, by fixing the date of personal hearing to the petitioner and after hearing the petitioner in full shall pass appropriate orders on merits and in accordance with law.

(vi) Considering the fact that the impugned order itself has been set aside, this Court is of the opinion that the attachment made on the bank account of the petitioner can no longer survive and hence, the same has to be given a go by. Consequently, the respondent-Department is directed to pass appropriate order towards de-freeze the bank account of the petitioner, immediately upon the production of proof with regard to the payment of a sum of Rs.10,000/- by the petitioner as stated above.

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

24.03.2025

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Index : yes/no
Neutral Citation : yes/no

To

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Krishnan Ramasamy,J.,

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