IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 05.02.2025

Coram

The Hon'ble Mr.Justice Krishnan Ramasamy

W.P.No.18161 of 2023
and
WMP.Nos.17356 and 17362 of 2024

Srinivasa and Co
Represented by Managing Partner,
Mr.R.Srinivasan,
3/214A, Thirumalaigiri Road,
Kandampatty, Salem-636005. ... Petitioner

..Vs..

1. The Assessment Unit, Income Tax Department,
The National Faceless Assessment Centre, Delhi.

2. The Deputy Commissioner of Income Tax,
Circle (1), Salem, No.3, Gandhi Road,
Salem- 636007. ... Respondents

Prayer: This Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari to call for the records of the 1st respondent in DIN & Order No.:ITBA/AST/S/147/2023-24/1053070296(1) relating to the assessment order passed u/s.147 r.w.s 144B of the Income Tax Act, 1961 for the assessment year 2017-18 in PAN:AAWFS1881R dated 22.05.2023 and quash the same.

For Petitioner : Mr.T.Vasudevan

For Respondents : Dr.B.Ramaswamy
Senior Standing Counsel

ORDER

This writ petition has been filed challenging the order passed by the 1st Respondent dated 22.05.2023 and to quash the same.

2. The learned counsel for the Petitioner would submit that initially a notice under Section 148 of the Income Tax Act, 1961 (in short 'the Act') was issued to the petitioner by the 2nd respondent and thereafter a notice under Section 142(1) of the Act came to be issued by the 1st respondent, for which the petitioner had submitted its reply on 13.01.2023. Thereafter, the 1st respondent issued a notice under Section 142 (1) on 16.01.2023 calling for bank statement, for which the petitioner filed its response on 01.05.2023 by uploading the details called for. Thereafter, the 1st respondent issued a Show Cause Notice on 09.05.2023 and in the said show cause notice the petitioner was directed to submit its reply by 11 hours of 14.05.2023. Since the petitioner could not file its reply, they sought for adjournment on medical grounds till 26.05.2023 to file reply.

3. Further, he would submit that replies to the show cause notice and 142 (1) notice could not be uploaded on 17.05.2025 for the reason that the portal window for making submissions stated 'closed'. The petitioner on 18.05.2023 raised a grievance stating that reply could not be made in the portal and requested to facilitate the opening of portal to submit the response. On 18.05.2023, the petitioner received a reply stating that grievance of the petitioner is resolved. and it is stated that since the assessment order was passed on 15.05.2023 it was closed. Subsequently, the 1st respondent passed the impugned assessment order on 22.05.2023 under Sections 147 read with section 144B of the Act for the Assessment Year 2017-2018, making addition of Rs.38,62,985/- under the caption "*variation with respect of unexplained money under Section 69A*" and in the said order, the 1st respondent had stated that the penalty proceedings under Section 271AAC(1) is separately initiated and the said order is impugned in this Writ Petition.

4.The main grievance of the Petitioner is that the petitioner has not been provided with sufficient opportunity of personal hearing before passing the impugned order and therefore the same is in violation of principles of natural justice that apart despite a request being made by the petitioner to file its reply on medical grounds, the respondents failed to consider the same. He therefore prays to set aside the impugned order.

5.Per contra,Dr.B.Ramswamy learned Senior Standing Counsel for the respondents would submit that in the present case, the petitioner was not only served with notices but also given ample opportunities to provide explanations to submit relevant documents and actively participate in the assessment proceedings, despite the same, the petitioner failed to comply with several notices issued by the assessing officer and therefore the question of not providing opportunity to the petitioner does not arise. Even final show cause notice was issued under Section 144 (b) on 09.05.2023, wherein they have provided six days time for filing reply. Since, they the petitioner failed to file its reply assessment order came to be passed. The said assessment order also referred to number of opportunities being provided to the petitioner. Hence, he prayed for dismissal of this petition.

6. I have considered the submission made by the learned counsel for the petitioner as well as learned Senior Standing Counsel appearing for the

respondents.

7. In the present case, the grievance expressed by the petitioner is that though the petitioner sought time to file reply to the show cause notice dated 09.05.2025, there was no response from the department and even when the petitioner tried to upload the reply through portal on 17.05.2025, the portal window was closed and thereafter on 18.05.2023, when the petitioner raised a grievance stating that reply could not be made in the portal and requested to facilitate the opening of portal to submit the response, the petitioner received a reply on 18.05.2023 stating that grievance of the petitioner is resolved and it is stated that since the assessment order was passed on 15.05.2023 the portal was closed. The learned Senior Standing counsel for the respondents submitted that no request was received from the petitioner seeking adjournment on medical grounds. Therefore, this Court is of the view that was some confusion while passing the assessment order.

8. It is settled law that violation of principles of natural justice is a failure of due process. If any order is passed against the petitioner with demand, that order has to be passed after giving an opportunity of personal hearing to the petitioner otherwise, it will amount to depriving the interest of the petitioner

and the same amounts to violation of principles of natural justice.

9. In the case on hand, the impugned order was passed without giving opportunity of personal hearing to the Petitioner and therefore the same is liable to be set aside. Accordingly, this Court passes the following order:

(i) The impugned order dated 22.05.2025 is set aside and the matter is remanded back to the Respondents, subject to the payment of a sum of Rs.2,000/- to the Principal Government Naturopathy Medical College and Hospital, Account No.7883022723, IFSC Code: IDIB000M157, within a period of 2 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) Upon production of proof with regard to the payment of a sum of Rs.10,000/- as stated above, the Respondents shall activate the Departmental portal, within a period of ***two weeks***, in order to enable the petitioner to file his reply,

(iii) The petitioner shall file their reply/objection along with the required documents, if any, within a period of 15 days thereafter.

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

(v) It is made clear that in case if there is any difficulty in uploading the details in portal, the petitioner is directed to raise grievance, in which case the respondent shall redress the same.

10 . With the above directions, this writ petition is disposed of. No costs. Consequently, the connected miscellaneous petitions are also closed.

05.02.2025

Speaking/Non-speaking order
Index : Yes / No
Neutral Citation : Yes / No
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To

1. The Assessment Unit, Income Tax Department,
   The National Faceless Assessment Centre, Delhi.

2. The Deputy Commissioner of Income Tax,
   Circle (1), Salem, No.3, Gandhi Road,
   Salem- 636007.

Krishnan Ramasamy,J.,

arr

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