IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 23.06.2025
Coram
The Honourable **Mr.Justice Krishnan Ramasamy**

W.P.No. 38834 of 2024
and
W.M.P.Nos.42042 to 42044 of 2024

Manickam Malu Prasanna
No.29 Alagappa Layout
Venkatesa Colony, Pollachi 642 001. ...Petitioner

Vs.

1 The Assessment Unit
Income Tax Department,
National e-Assessment Centre Delhi E-Ramp
Jawaharlal Nehru Stadium
Delhi 110 003

2 The Income Tax Officer Ward 1
Pollachi Income Tax Department,
Venkatesa Colony Pollachi 642 001

3 The Principal Commissioner Of Income Tax 1
Coimbatore Income Tax Department.No.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 Writ Petitioner on the file of the 1st Respondent to quash the impugned order u/s 147 read with sections 260 and 144B of the Income Tax Act 1961 dated 30.09.2024 in DIN ITBA/AST/S/147/2024-25/1069276070(1) for the Assessment Year 2018-19.

For Petitioner : Mr.G.Tarun, for Mr.A.S.Sriraman

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

Order

The challenge in this Writ Petition is to the order passed by the 1st respondent u/s 147 read with sections 260 and 144B of the Income Tax Act 1961 dated 30.09.2024 for the Assessment Year 2018-19 and to quash the same.

2. The learned counsel appearing for the petitioner would submit that initially, the petitioner has filed a Writ Petition challenging the assessment order passed by the first respondent herein dated 04.03.2024 before this Court by way of W.P.No.9129 of 2024, and this Court vide order dated

05.04.2024 set aside the assessment order dated 04.03.2024 and directed the petitioner to file additional documents within a period of 15 days from the date of receipt of a copy of the said order dated 05.04.2024; that the proceedings to give effect to the direction of the Court's order commenced on 26.09.2024, providing time limit to the petitioner to file response on 27.09.2024 before 12.15 p.m, to which, the petitioner filed electronic response on 27.09.2024, however, even before the time limit for filing a reply had lapsed, the first respondent issued a show cause notice on the same date, i.e. on 26.09.2024, seeking response on or before 27.09.2024; that later, the first respondent issued another show cause cause on 27.09.2024 seeking response on or before 28.09.2024 at 1.30 p.m., the petitioner also filed electronic response on 28.09.2024; that thereafter, the respondent suo moto fixed the date for video conferencing on 28.09.20224 at 2.00 p.m and even before the expiry of time limit for filing response to the show cause notice/personal hearing, the petitioner received an e-mail intimating the fixing of video conferencing on 28.09.2024 at 2.44 p.m.

2.1 Therefore, it is contended by the learned counsel for the petitioner that again the first respondent, without consideration of the replies/documents filed by the petitioner, proceeded to complete the re-assessment in terms of Section 147 read with Sections 260 & 144b of the Act dated 30.09.2024, by stating as if that the petitioner has failed to produce sufficient documents in support of their contention and also failed to utilize the personal hearing afforded to him via. video conferencing, hence, under these circumstances, the assessment order is passed based on the information available with them. Aggrieved by the same, the present Writ Petition is filed challenging the said order dated 30.09.2024.

3. The learned Senior Standing Counsel for respondent-Department would submit that as per the direction issued by this Court in W.P.No.9129 of 2024 dated 05.04.2024, the petitioner ought to have filed their additional reply along with documents within a period of 15 days from the date, on which, such order copy was received; that, it was only on receipt of such additional reply with documents, the first respondent is supposed to provide an opportunity of personal hearing.

3.1 Therefore, it is contented by the learned Senior Standing Counsel that, despite such a specific direction was issued by this Court directing the petitioner to file additional reply, prescribing the time-limit of 15 days, the petitioner had slept for four months citing the reason that the functionality was not available and discharge his onus of filing the reply, however, a show cause notice was issued to the petitioner on 26.09.2024 seeking for such additional reply/documents on or before 27.09.2024, though the petitioner filed additional reply, failed to produce documents and also to opt for video conferencing, however, the first respondent, in order to give one more final opportunity, issued another show cause notice dated 27.09.2024 fixing the date for filing reply and time for appearing through video conferencing on 28.09.2024 at 2.00 p.m, thus, despite ample opportunities provided to the petitioner, the petitioner has failed to file required documents and also failed to utilize the opportunity of personal hearing afforded to him through video conferencing, hence, under such circumstances, the impugned assessment order came to be passed by the first respondent and the same is sustainable in law.

4. Heard the learned counsel appearing for the petitioner and the learned Senior Standing Counsel for respondents and perused the materials available on record.

5. It is an undisputed fact that the assessment order passed by the first respondent was put to challenge by the petitioner before this Court by way of filing W.P.No.9129 of 2024 and this Court vide order dated 05.04.2024, set aside the order impugned therein and remanded the matter to the first respondent for re-consideration, simultaneously, the petitioner was directed to file any additional reply with documents within a period of 15 days from the date of receipt of such order. Thus, by virtue of the said order dated 05.04.2024, the petitioner is supposed to file additional documents within 15 days' time from the date, on which, the said order was received by the petitioner.

5.1 According to the respondent, despite lapse of four months, since no response was forthcoming from the petitioner, the first respondent issued a show cause notice on 26.09.2022 calling upon the petitioner to file reply on or before 27.09.2024, though the petitioner has filed reply since the same was not supported with required documents, the petitioner has been issued with another show cause notice dated 27.09.2024 requiring the petitioner to file additional document on 28.09.2024, and to appear for personal hearing through video conferencing at 2.00 p.m. Though the petitioner filed reply with documents on 28.09.2024, however, failed to appear through video conferencing.

5.2 Though upon hearing the submission made on the side of the respondent, this Court arrived at a conclusion not to entertain this Writ Petition as the same deserves no merit, however, upon further hearing the submission made on behalf of the petitioner, this Court finds that there was an error committed on the side of the respondent. Though the first respondent, in the wake of justice, intended to provide one more opportunity to the petitioner by issuing another show cause notice dated 27.09.2024, thereby, fixing the date and time for video conferencing on 28.09.2024, at 2.00., as per the time schedule fixed in the said second show cause notice dated 27.09.2024, the video conferencing link was not provided to the petitioner, so as to enable the petitioner to appear through video conferencing and further, a perusal of records would go to show that the video conferencing link was provided to the petitioner only after expiry of time of 2 hours, i.e. at 2.44, by sending an intimation through e-mail providing such link.

5.3 Thus, it is clear that it is purely due to fault on the part of the respondent, the petitioner was not in a position to appear for personal hearing via. video conferencing. Therefore, the first respondent having committed the said fault, has shifted the blame on the petitioner and stated that the petitioner failed to utilize the opportunity of personal hearing granted via. video conferencing, which amounts to pot calling the kettle black.

6. Therefore, this Court is inclined to pass/issue the following orders/directions:-

i) The impugned order passed by the 1st respondent u/s 147 read with sections 260 and 144B of the Income Tax Act 1961 dated 30.09.2024 for the Assessment Year 2018-19 is set aside.

ii) The matter is onceagain remanded back to the first respondent for re-consideration.

iii) The first respondent is directed to consider the reply filed by the petitioner dated 28.09.2024 and fix a date for personal hearing of the petitioner, either in person or through video conferencing, in case, personal hearing is fixed through video conferencing, the first respondent may see through it whether the link for video conferencing is provided to the petitioner or not and after hearing the petitioner, shall proceed to decided the matter in accordance with law.

iv) In the event, if the petitioner intends to file an additional reply/additional documents, and if any such request is made by the petitioner, the first respondent shall consider the same, inasmuch as, the petitioner has approached this Court twice challenging the assessment order passed by him on account on non-consideration of reply and non-provision of personal hearing opportunity.

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

23.06.2025

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Index : yes/no
Neutral Citation : yes/no

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Krishnan Ramasamy,J.,

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