IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED :13.02.2025
Coram

The Honourable **Mr.Justice Krishnan Ramasamy**

W.P.No.38758 of 2024
and
W.M.P.No.41968 of 2024

Madhubala Narayanasamy ...Petitioner

Vs.

1. The Income Tax Officer,
   Non-corporate Ward – 17 (2)
   BSNL Building No.16, Greams Road,
   Chennai – 600 006.

2. The Income Tax Officer,
   Non-corporate Ward- 17 (4)
   BSNL Building No.16, Greams Road,
   Chennai – 600 006. ...Respondents

Prayer

Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus to call for records of the petitioner from the file of the second respondent and to quash the impugned order under Section 143 (3) r.w.s. 114 of the Act passed by the second respondent in PAN : AEBPN4544H, DIN : ITBA/AST/S/147/2023-24/1062381462 (1) dated 11.03.2024, for the AY 2015-16, and consequently, to direct the second respondent to complete the fresh assessment for AY 2015-16 after providing reasonable/sufficient opportunity of hearing by the way of effective communication to the petitioner.

For Petitioner : Mr.J.Saravanan

For Respondents : Dr.B.Ramaswamy
Senior Standing Counsel

Order

The challenge in this Writ Petition is to the order passed by the second respondent under Section 143 (3) r.w.s. 114 of the Act dated 11.03.2024, for the AY 2015-16, and consequently, to direct the second respondent to complete the fresh assessment for AY 2015-16 after providing reasonable/sufficient opportunity of hearing by the way of effective communication to the petitioner.

2. The learned counsel for the petitioner would submit that the petitioner has no source of income other than salary earned from 2005 onwards and the tax payable by her for each assessment year would be deducted at source by the respective employer and after such deduction, no further income tax was payable by her, therefore, there was no necessity for the petitioner to pay to file return of income, hence, the petitioner was not aware as to when the notice regarding re-assessment proceedings was caused by the respondent-Department, however, the respondent, without affording an opportunity of hearing to the petitioner, passed the impugned order, which is in violation of principles of natural justice.

3. Per contra, Dr.B.Ramaswamy, learned Senior Standing Counsel for the respondents would submit that before passing the impugned orders, all the notices/communications were served/issued to the petitioner via. Online Portal, E-mail and RPAD, however, insofar as notices sent via. E-mail is concerned, the same was bounced back and the notice sent through RPAD returned with an endorsement, 'No such Addressee', and therefore, it is not open to the petitioner to contend that no intimation was given before passing the impugned order, when the petitioner, having failed to utilize the same, cannot come out with a false plea and seek refuge under the pretext that the petitioner is not aware of such assessment proceedings.

4. In reply, the learned counsel for the petitioner would submit that the petitioner is not residing in India, but residing at U.S.A., therefore, there is no possibility for the petitioner to receive the notice that is alleged to have been sent to the petitioner via. RPAD, hence, the learned counsel prayed for setting aside the impugned order.

5. I have given due considerations to the submissions made by Mr.J.Saravanan, learned counsel appearing for the petitioner and Dr.B.Ramaswamy, learned Senior Standing Counsel for the respondents and perused the materials on records.

6. It is the grievance of the petitioner that before passing the impugned order, the petitioner has not been heard, therefore, the said order is an ex parte order and suffers from violation of principles of natural justice and liable to be set aside. Such aversion of the petitioner has been strongly refuted by the learned Senior Standing Counsel for the respondents that the petitioner has not only been issued notice via. e-filing Portal but also issued via. E-mail as well as RPAD, however, notice sent via. E-mail was bounced back and the notice sent via. RPAD returned with an endorsement, No such addressee', therefore, it is not open to the petitioner to contend that no opportunity of hearing was given.

6.1 Thus, in the case on hand, notices have been issued to the petitioner through all modes of service, viz., Online Portal, E-mail and RPAD. Insofar as notice sent through online portal is concerned, since the petitioner is not a regular income tax payer, she cannot be expected to view the Portal then and there. So far as the notice sent via. E-mail is concerned, since the same was stated to have bounced back, the same could not be known to the petitioner. Finally, the notice that was sent through RPAD is concerned, the same was returned with an endorsement, "No such Addressee, as the petitioner is no longer resident of India, there is no possibility for her to respond to such notice. In the said scenario, it is sheer clear that the petitioner is totally unaware of the proceedings being initiated by the respondent-Income Tax Department. That apart, the sale with regard to which, reassessment proceeding were initiated, was made in the year 2015-16, whereas, impugned proceedings were initiated in the year 2023-

24, therefore, the petitioner, being a non-tax payer, cannot be expected to view the Portal after a lapse of 8 eight years. Thus, the ignorance pleaded by the petitioner appears to be genuine.

7. Thus, this Court, in the interest of justice, is inclined to set aside the impugned orders as the order has been passed in violation of principles of natural justice, however, the same is subject to the payment of Rs.7,500/- to the Cancer Institute Adyar, Chennai.

8. Accordingly, this Court passes the following orders:-

i) The impugned order dated 11.03.2024 is set aside subject to the condition that the petitioner shall pay a sum of Rs.7,500/- (Rupees Seven Thousand and Five Hundred only) to the Cancer Institute Adyar, Chennai.

ii) Thereafter, the petitioner shall file a reply within a period of three weeks from the date of receipt of a certified copy of this order. Upon which, the respondent is directed to issue 14 days clear notice affording opportunity of personal hearing to the petitioner and after hearing the petitioner in full, shall pass orders in accordance with law.

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

13.02.2025

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Index : yes/no
Neutral Citation : yes/no

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Krishnan Ramasamy,J.,

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