IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.06.2019

CORAM

THE HONOURABLE MR.JUSTICE M.SUNDAR

W.P.No.7707 of 2019
and
W.M.P.No.8347 & 8383 of 2019

P.Durai ...Petitioner

..Vs..

Income Tax Officer,
Ward-1,
Villupuram,
No.1, chairman Subbarayar Street,
West Shanmugapuram,
Villupuram-605 602.
...Respondent

Prayer: Writ petition filed under Article 226 of the Constitution of India to issue a Writ of certiorarified mandamus, to call for the records made in Assessment order dated 22.12.2018 passed by the respondent and quash the same and permit the petitioner to submit his explanation.

For Petitioner : Mr.T.N.Rajagopalan

For Respondent : Mr.A.N.R.Jayaprathap
Learned Junior Standing Counsel (IT)

O R D E R

Mr.T.N.Rajagopalan, learned counsel on record for writ petitioner and Mr.A.N.R.Jayapratap, learned Junior Standing Counsel (Income Tax) on behalf of sole respondent are before this Court.

2. With the consent of both learned counsel, the main writ petition itself is taken up, heard out and disposed of.

3. The entire writ petition turns on a very narrow compass.

4. It arises under 'Income Tax Act, 1961' ('IT Act' for

brevity).

5. The relevant assessment year is 2011-2012.

6. This is a case where the writ petitioner is an individual and though he had obtained a Permanent Account Number (PAN), the writ petitioner had not filed returns or paid tax at any point of time.

7. This Court is informed that the writ petitioner is in a small hamlet and was running a small grocery shop.

8. On gaining the information that the writ petitioner has made several cash deposits in his savings Bank Account, the respondent initiated proceedings. In response to notice issued by the respondent, the writ petitioner had sent a reply dated 21.03.2018, wherein the writ petitioner has submitted that he was doing provision store business (Grocery Shop) upto the financial year 2009-2010. After closure of business, he had deposited certain amounts in bank by way of cash and also Fixed Deposits. The money is realized from the sale of small grocery shop and also from sundry debtors, besides capital from the closed business. This is articulated in paragraph-4 of the counter affidavit filed by the respondent and the same reads as follows:

> ''4. In response to the above communication, the assessee furnished his replay which was received by the AO on 21.03.2018. The assessee stated that ''I was doing provision store business upto the financial year 2009-2010. After the closure of business, I have deposited in bank by cash/fixed deposits, in the bank account of my realization of sundry debtors and capital in the closed business''. The assessee further informed that he had no taxable income. However, the assessee did not produce any documentary evidences towards his above claim."

9. Ultimately, the respondent passed an assessment order inter alia under Section 144 read with Section 147 of IT Act. This assessment order is dated 22.12.2018. From this assessment order, the Income Tax Officer assessed the income of the writ petitioner for the relevant assessment year i.e. 2011-2012 at Rs. 27,31,370/- and demanded tax payable at Rs.14,12,880/-. The calculation sheet was also enclosed to that order.

10. What is of importance was, after the response of the

writ petitioner dated 21.03.2018, the writ petitioner did not go before the respondent and submit any document, in spite of repeated opportunities being given. This has been set out in the impugned assessment order itself.

11. However, from the files, it is seen that since no response was received by the writ petitioner assessee to the notice under Section 148 of IT Act, Assessing Officer issued notice dated 26.04.2016 under Section 142(1) of IT Act seeking production of evidences relating to the deposits made with the banks, but the same was unserved and returned with postal endorsement 'door locked'.

12. It is in this factual backdrop, the learned counsel for the writ petitioner draws the attention of this Court to paragraph 3 of the writ affidavit and makes a fervent plea that it would be an appropriate case to grant one more opportunity to the writ petitioner to go before the Assessing Officer along with his Charted Accountant and submit all relevant particulars.

13. To be noted, as already mentioned supra, the cash deposits made by the writ petitioner is not in dispute. Therefore, all that the writ petitioner can now explain to the respondent is that either his income is exempt from tax or that it was not the income received in one assessment year.

14. Learned counsel for writ petitioner submits that the writ petitioner has studied only upto Grade-V. Attention of this Court was drawn to Paragraph-3 of the affidavit filed in support of this writ petition, which reads as follows:

> ''3. I state that my mother died when I was young and my father married second time and we were taken care of by our step-mother. In the month of March 2018, I was served with a notice by the Income Tax authorities. At that time as my step-mother was ill and frequently admitted in hospital and ultimately she died in the month of July 2018. At the same time, my wife is also a patient and was suffering from severe thyroid problems. My son who is residing at Chennai and working was married in the year 2012 and his wife had health issue and she was under treatment. In the month of March 2018, she conceived. Since there was nobody to look after them at Chennai, we had to frequently travel and stayed at Chennai both for the treatment of my wife and that of my daughter-in-law. At the same time, I had to look after my ailing step-mother. Due to heavy tension and my lack of education and knowledge and my village upbring, I did not have any knowledge about the

procedures, I did not take any steps in view of the first notice. It seems that subsequently other proceedings were continued but was not served on me, because of our absence in the house, it seems it was returned unserved.''

15. The learned Revenue counsel submits that as the cash deposits are not disputed, there is very little scope for the writ petitioner to give any explanation.

16. However, as already alluded to supra, the issues, as to whether the income is exempt from tax and as to whether he had earned it in one assessment year, have to be gone into.

17. In any event, the predicament which the writ petitioner has undergone has been articulated in paragraph-3 of the writ affidavit and the same is not disputed.

18. In the light of the aforesaid scenario, this Court is of the view that as an exceptional case, one opportunity can be given to the writ petitioner and therefore the following order is passed:

a) impugned assessment order made by the sole respondent dated 22.12.2018 is set aside without expressing any opinion on merits. It is also made clear that the order is being set aside only for the purpose of giving an opportunity to the writ petitioner to give his explanation;

b) Learned counsel for the writ petitioner submits, on instructions, that the writ petitioner will go before the respondent on 01.07.2019, Monday, at 12 noon, along with his Chartered Accountant and supporting documents. It is open to the writ petitioner to submit any explanation that he may have;

c) The writ petitioner shall not seek any adjournment or rescheduling and if the writ petitioner does not appear on 01.07.2019, the impugned order which has been set aside will stand revived. The writ petitioner will also not seek further hearings beyond 01.07.2019;

d) When the writ petitioner appears on 01.07.2019 and gives explanation, the respondent shall redo the assessment and pass an order afresh within a fortnight therefrom i.e. by 15.07.2019 and such order shall be served on the writ petitioner in a manner known to law and such order shall be communicated to the writ petitioner under due acknowledgment.

19. This writ petition is disposed of with the above directions. There shall no order as to costs. W.M.P. is also closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

rli

To

Income Tax Officer,
Ward-1,
Villupuram,
No.1, chairman Subbarayar Street,
West Shanmugapuram,
Villupuram-605 602.

+1 cc to Mr.T.N.Rajagopalan, Advocate, Sr.No. 48697
+1 cc to Mr.A.P.Srinivas, Senior Standing counsel for IT, Sr.No.48805

W.P.No.7707 of 2019
and
W.M.P.No.8347 & 8383 of 2019

CSL/02.07.2019