

W.P.(MD).No.9996 of 2

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 20.05.2022

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THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD).No.9996 of 2022

and

W.M.P.(MD).Nos.7128 & 7129 of 2022

Thiyagarajan Venkatraman

... Petitioner

Vs.

The Income Tax Officer,
Ward-1,
Income Tax Office,
100, Nanjikkottai Road,
Thanjavur-613 006.

... Respondent

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, to call for the records of the respondent in PAN AFCPV3606C DIN & Notice No.ITBA/AST/F/148A/2022-23/1042767545(1), dated 19.04.2022, and quash the same as illegal, arbitrary and against the principles of natural justice.

For Petitioner : Mr.K.Soundararajan

For Respondent : Mr.N.Dilip Kumar



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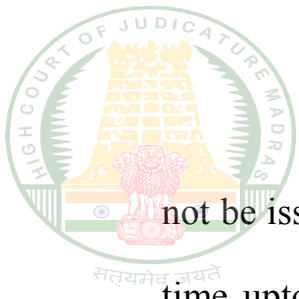
W.P.(MD).No.9996 of 2

ORDER

The present writ petition has been filed to quash the impugned order, dated 19.04.2022.

2. The brief facts of the case is that the petitioner is having HUF status, running an Aqua Farm in the name of Lakshmi Aqua Centre and being an assessee, return of income was filed regularly. During the assessment year 2015-2016, the HUF filed the return on 31.10.2015, also shown the income of Rs.26,99,510/- and paid the tax of Rs.6,36,100/-. The said amount was received from the sale of prawns and was deposited in the HUF current account. During the assessment year 2015-2016, a sum of Rs.86,96,105/- was deposited in the current account of the HUF out of the sale proceeds to Rs.8,70,80,900/- and the same was disclosed in the HUF account.

3. The respondent had issued a notice under Section 148-A of the Income Tax Act on 25.03.2022, alleging that the income chargeable to tax has escaped for assessment and sought for the reply why the notice under Section 148 could



not be issued treating the same as escaped income. The respondent had granted time upto 31.03.2022. Further he had alleged that the petitioner had made a cash deposit of Rs.85,66,106/- in the City Union Bank Account during the assessment year 2015-2016. The petitioner has submitted his reply on 28.03.2022 and explained that the cash was deposited in the current account of the HUF, also disclosed in the HUF current account and return of income was also filed on 31.10.2015.

4. The specific contention of the petitioner is that the cash was deposited in the HUF current account and not in the account of the individual. In support of the explanation, the petitioner had enclosed all the copies of the return of income acknowledgement, statement and Form 3CB, 3CD and bank accounts of the HUF. The petitioner explained that by mistake the individual PAN number has been given at the time of opening the HUF current account and therefore prayed to drop the proposal initiated under Section 148A of the Income Tax Act against the individual PAN number.

5. The contention of the petitioner is that the respondent did not consider the specific explanation and the documents that was submitted along with the



explanation. On perusal of the impugned order, it is seen that the respondent stated as follows:

"In response to Notice u/s 148A(b), the assessee has replied through e-proceeding on 28.03.2022 furnishing reply letter, dated 28.03.2022 along with Acknowledgement copy of the ROI filed for A.Y 2015-16 in HUF status (AAHHV6656C) and Income and Expenditure statement, Balance sheet for the HUF in which the assessee has stated that the cash deposit made to the tune of Rs.8696105/- during the F.Y 2014-2015 in the CUB current a/c no.037120000072820, the same is related to the HUF. And the same is admitted in the HUF's ROI. Subsequently the assessee has filed adjournment letter on 07.04.2022 and requested 10 days time for furnishing of further documental evidence.

The reply of the assessee is considered. However, sufficient time given to the assessee. But, till date the assessee has not furnished any documentary evidence.

On the basis of material available on record and in the absence of any further documentary evidences/explanation from the assessee, in response to the Notice u/s 148A(b) of the Act, it is found that income chargeable to tax has escaped assessment for the AY 2015-16 and therefore, I am satisfied that this is a fit case for issue of Notice u/s 148 of the Act for the AY 2015-16. This order u/s 148A(d) of the Act is



passed with the prior approval of the competent authority i.e. Pr. Chief Commissioner of Income-tax, Chennai".

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6. The respondent had stated that the year of assessment was considered and sufficient time was granted to the assessee but the assessee has not furnished the documentary evidence. The claim of the petitioner is that he has submitted the documentary evidence showing the cash transaction, the deposit of the cash in the HUF account. However, the wrong entry was made in the account by giving the personal PAN number. This was explained in the explanation and the same was not considered by the respondent. The contention of the petitioner is that he has submitted his explanation along with the documentary evidence. However, the respondent stated in the impugned order that documentary evidence was not furnished. It is a specific contention of the petitioner is that, sufficient time was not granted to him before passing this order. Therefore, this Court remits the case back to the authorities with the following direction:

"(i) The petitioner shall appear before the authority along with the documentary evidence.

(ii) The respondents shall grant personal hearing and consider



the explanation and the documents that would be filed by the petitioner.

WEB COPY (iii) *The respondent is directed to consider the specific stand of the petitioner that individual PAN number was granted while opening the HUF account".*

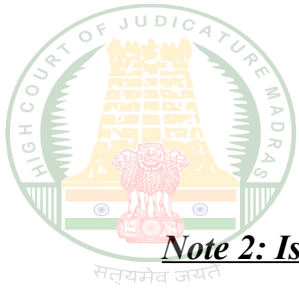
The impugned order is set aside and the respondents are directed to complete the said exercise and pass fresh order within a period of twelve (12) weeks from the date of receipt of a copy of this order.

7. The writ petition stands disposed of, with the above directions. There shall be no order as to costs. Consequently, connected Miscellaneous Petitions are closed.

20.05.2022

Index : Yes / No
Internet : Yes/ No
btr

Note 1: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.



W.P.(MD).No.9996 of 2

Note 2: Issue order copy on 23.05.2022.

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Income Tax Office,
100, Nanjikkottai Road,
Thanjavur-613 006.



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W.P.(MD).No.9996 of 2

S.SRIMATHY, J.

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