



WEB COPY



W.P.No.10107 of 20_

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 14.10.2024

Coram

The Honourable Mr.Justice KRISHNAN RAMASAMY

**W.P.No.10107 of 2024
and W.M.P.Nos.11142 & 11144 of 2024**

Dhanapal Eswari

...Petitioner

Versus

- 1.The Income Tax Officer,
Ward – 1, Perambalur,
Perambalur Income Tax Office,
No.71, Deena Dayalan Complex,
1st Floor, Venkatesapuram,
Perambalur – 621 212.
- 2.The Assessment Unit,
Income Tax Department,
National Faceless Assessment Centre,
4th Floor, Mayur Bhawan,
Connaught Lane, Connaught Place,
New Delhi – 110 001.

...Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of certiorari calling for the records in ITBA/AST/S/147/2023-24/1061326811(1) dated 22.02.2024 on the file of the 2nd respondent relating to A.Y.2018-19 and quash the same.

For Petitioner	:	Mr.I.Dinesh
For Respondents	:	Dr.B.Ramaswamy, Senior Standing Counsel



WEB COPY

W.P.No.10107 of 20_



ORDER

Dr.B.Ramaswamy, learned Senior Standing Counsel takes notice for the respondents.

2. With the consent of both sides, this writ petition is taken up for final disposal at the admission stage itself.

3. The present writ petition has been filed by the petitioner challenging the impugned order dated 22.02.2024 passed by the 2nd respondent.

4. The petitioner is engaged in the business of distribution of Gas cylinders and Gas stoves. She has been duly filing her Return of Income and Tax Audit Report. Due to some personal issues and unavoidable situation, she failed to file the Return of Income for the Assessment Year 2018-19. While so, the 1st respondent issued a Show Cause Notice dated 23.03.2022 to the petitioner, for which, the petitioner sent reply vide Letter dated 30.03.2022 along with CBDT e-challan for e-tax payment and the



WEB COPY

Statement of Income for the Assessment Year 2018-19. That apart, the petitioner requested the 1st respondent to issue Notice under Section 148 of the Income Tax Act, 1961 (hereinafter referred to as 'Act') in order to enable her to file the Return of Income. Thereafter, the 2nd respondent passed an order dated 07.04.2022 under Section 148A(d) of the Act and issued a Notice dated 07.04.2022 under Section 148 of the Act. However, the petitioner was aware of the Notice dated 07.04.2022, only when she received an Intimation Letter dated 06.02.2023 from the Income Tax Department. Subsequently, the 1st respondent has issued two notices viz., Notice dated 20.04.2023 under Section 143(2) of the Act and Notice dated 17.05.2023 under Section 142(1) of the Act. On 25.07.2023, the petitioner had updated her e-mail ID on the Income Tax Portal. Finally, the 2nd respondent has issued the impugned Assessment Order dated 22.02.2024, by adding Cash Deposits of Rs.1,72,74,900/- as unexplained cash deposit under Section 69A of the Act and Rs.5,20,402/- as unexplained expenditure under Section 69C of the Act; thereby, making a demand of Rs.3,09,48,770/-. Only when the impugned order was served to the petitioner, she came to know that two Notices dated 28.08.2023 & 01.12.2023 under Section 142(1) of the Act and a Show Cause Notice dated



17.01.2024 were issued to her name. Hence, the petitioner has filed the present writ petition.

WEB COPY

5. The learned counsel for the petitioner submitted that the petitioner's primary e-mail ID is dbrguptha69@gmail.com and the secondary e-mail ID is ndpdbr@gmail.com. The initial notices were sent to the petitioner's updated registered e-mail ID, but, the subsequent Notices dated 28.08.2023 & 01.12.2023 and Show Cause Notice dated 17.01.2024 were not sent to the updated e-mail ID of the petitioner and the same were sent to the petitioner's old mail e-mail ID which is currently not in use. The said notices and assessment order were neither sent to the petitioner's updated registered e-mail ID nor served to the petitioner through post. Hence, the petitioner was unaware of the proceedings and unable to participate in the proceedings. The learned counsel also submitted that the re-assessment itself is illegal as there is no escapement of taxable income and the assessment order is beyond the scope of show cause notice. Further, prior to the passing of impugned assessment order, no sufficient opportunity was provided to the petitioner to put forth her case. Therefore, the learned counsel prayed that the impugned order may be quashed.



WEB COPY

6. *Per Contra*, the learned Senior Standing Counsel appearing for the respondents submitted that the initial four notices dated 23.03.2022, 07.04.2022, 20.04.2023 & 17.05.2023 were correctly sent to the petitioner's registered e-mail ID, only the subsequent three notices dated 28.08.2023, 01.12.2023 & 17.01.2024 were sent to the petitioner's old e-mail ID. The petitioner has not properly effected the change of her e-mail ID on the Income Tax Portal. Fault is on the part of the petitioner and not on the part of the respondent Department. Therefore, the learned Senior Standing Counsel prayed for dismissal of this writ petition.

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

8. In the present case, the show cause notice as well as the impugned order were sent to the petitioner's old e-mail ID and the same were also not sent to the petitioner through registered post. Hence, the petitioner was unaware of the proceedings and she was unable to reply to the show cause



notice. Further, the 2nd respondent has passed the impugned assessment order, without even providing an opportunity of hearing to the petitioner.

WEB COPY

9. According to the respondents, the fault is on the part of the petitioner who has not properly effected the change of e-mail ID on the Income Tax Portal. The petitioner has not properly replaced the old e-mail ID with new e-mail ID. Therefore, the Notices dated 28.08.2023, 01.12.2023 & Show Cause Notice dated 17.01.2024 and impugned order were sent to the petitioner's old e-mail ID.

10. Considering the facts and circumstances of the case and also, having regard to the submissions made by the learned counsel on either side, this Court, in the interest of justice, issues the following directions:

(i) The impugned order in ITBA/AST/S/147/2023-24/1061326811(1) dated 22.02.2024 passed by the 2nd respondent is quashed and the matter is remanded back to the 2nd respondent for fresh consideration on condition that the petitioner shall pay 15% of the disputed tax amount, within a period of three weeks from the date of receipt of a copy of this order. After making such payment, the petitioner shall produce the payment proof before the 2nd



respondent.

WEB COPY

(ii) It is made clear that quashing of the impugned order will come into effect, only from the date of payment of 15% of the disputed tax amount by the petitioner.

(iii) The petitioner is directed to file their Reply to the Notices dated 28.08.2023 & 01.12.2023 and Show Cause Notice dated 17.01.2024, within a period of three weeks thereafter.

(iv) On filing of such Reply by the petitioner, the 2nd respondent shall consider the same and pass appropriate orders, on merits and in accordance with law, after affording an opportunity of personal hearing to the petitioner, as expeditiously as possible.

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

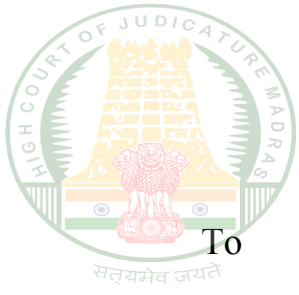
14.10.2024

mrr

Index: Yes/No

Neutral Citation: Yes/No

Speaking Order (or) Non-Speaking Order



W.P.No.10107 of 20_.

To

WEB COPY

- 1.The Income Tax Officer,
Ward – 1, Perambalur,
Perambalur Income Tax Office,
No.71, Deena Dayalan Complex,
1st Floor, Venkatesapuram,
Perambalur – 621 212.
- 2.The Assessment Unit,
Income Tax Department,
National Faceless Assessment Centre,
4th Floor, Mayur Bhawan,
Connaught Lane, Connaught Place,
New Delhi – 110 001.



WEB COPY



W.P.No.10107 of 20_.

KRISHNAN RAMASAMY, J.

mrr

W.P.No.10107 of 2024

14.10.2024

