

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR**

OWP No. 591/2019 [WP(C) 1496/2019]

R.N. Gunjoo

..... Petitioner(s)

Through: Mr. Anil Bhan, Sr. Advocate with,
Mr. Danish, Advocate.

V/s

Union of India & Ors.

.....Respondent(s)

Through: Mr. T.M. Shamsi, DSGI.
Mr. Areeb Kawoosa, Advocate.

CORAM:

HON'BLE MR. JUSTICE TASHI RABSTAN, JUDGE.

HON'BLE MR. JUSTICE RAHUL BHARTI, JUDGE.

(JUDGMENT)

Rahul Bharti-J:-

1. Heard the learned counsel for the parties. Perused the pleadings.
2. The disposal of this writ petition shall not detain this Court any further given the nature of issue involved which is whether the manner of passing of impugned order bearing No. F.No: PR.CIT/ITO/JMU/264/2018-19/5472 dated 22.10.2018 by respondent No. 2-Principal Commissioner of Income Tax J&K, Jammu (" in short Pr. CIT") is according to procedural fairness and rules of natural justice or not.
3. Before we come to address ourselves to the impugned order, we need to set out the chronology of events which lead to the landing of the matter before the respondent No. 2- Pr. CIT and the impugned order came to be passed.
4. Two purported transactions of the assessment year 2009-2010 in the form of purported payment of Rs. 12,50,072/- against time deposit and a cash deposit of Rs. 16,73,000/- were found related to the petitioner as being the income tax assessee.

5. By reference to the aforesaid particular transactions, on 01.03.2016 a notice under Section 133(6) of the Income Tax Act, 1961 is said to have been addressed to the petitioner asking for the information regarding the filing of the return of the income and disclosure of such financial transactions for the above said assessment year. This notice is admittedly said to have been addressed to the petitioner at the address available with the noticing issuing authority and which address is G-Gangoo Agency, A-296, Maglic Park Azad pur, Delhi.

6. As there was no response to this notice from the petitioner's end, another notice dated 29.03.2016 under Section 148 Income Tax Act, 1961, purportedly came to be issued to the petitioner bearing the same address as mentioned above. Even this notice is alleged to have evoked no response from the petitioner's end in any manner whatsoever which lead to issuance of another notice under Section 142(1) of the Income Tax Act, 1961 accompanied with a questionnaire asking the petitioner to file the details by or before 26.10.2016. This notice too was sent to the petitioner at the very same address and resulted in no response like the previous notices so sent to the petitioner.

7. A notice under Section 142(1) of the Income Tax Act, 1961 was addressed on 31.10.2016 for the petitioner to respond by 15.11.2016 and bearing the same very address which also ended up with the same fate as of no response from the petitioner's end.

8. Acting at the backdrop of the issuance of the aforesaid notices and course of action at the end of the Income Tax Officer Ward 3(2), Srinagar, a notice under Section 156 of the Income Tax Act, 1961 in Form 7 Rule 15 came to be addressed along with an assessment order by the Income Tax Officer Ward 3(2), Srinagar, to the petitioner asking for payment of

outstanding tax amount of Rs. 24, 62,820/-. This notice was also sent to the same very address of the petitioner which being G-Gangoo Agency, A-296, Maglic Park Azad pur, Delhi. Nothing came to be heard from the petitioner's end in reference to the notice along with demand and assessment order so sent.

9. The culmination of the aforesaid course of action came to take place when an Income Tax Officer Ward 3(2), Srinagar came to address a notice bearing No. ITO/W-2/SDR/DCR-19/2017-18 dated 17.01.2017 to the petitioner to show cause why a penalty be not levied under Section 221(1) of the Income Tax Act, 1961 for an overdue of payment of Rs. 24, 62,818/-. The petitioner was called upon to respond by 30.01.2018. It may be a matter of a typing error with respect to the date given in the notice dated 17.01.2017 for the petitioner to appear before Income Tax Officer Ward 3(2), Srinagar on 30.01.2018. This time, this particular notice was sent to the petitioner at a new address which is C-83, Block-C, Mahendru Enclave Delhi-110009. This notice came to land in the hands of the petitioner.

10. It is against this notice that the petitioner came forward with presentation of a petition under section 264 sent by registered post on 16.04.2018 addressed to the respondent No. 2- Pr. CIT wherein the petitioner came to refer to the fact of receiving notice under section 221(1) of the Income Tax Act, 1961 dated 17.10.2018, which again is a typographical error instead of being 17.01.2017 with respect to the claim of outstanding demand of Rs. 24, 62,818/- asking for show cause on the date of hearing fixed for 30.01.2018.

11. In this petition, the petitioner stated that no prior notice calling for information or attending hearing or notice of demand was ever received by him and put up an explanation with respect to the subject matter of said

show cause notice and sought indulgence of the respondent No. 2- Pr. CIT to direct the Assessing Officer concerned to revise the assessment as per computation sheet and reduce the demand to Nil.

12. Upon receipt of this petition filed purportedly under Section 264 of the Income Tax Act, 1961, the respondent No. 2- Pr. CIT came to solicit a report from the Assessing Officer concerned which vide a communication dated 17.05.2018 came to be submitted. Accordingly, the petitioner was served with a notice for attending the hearing of the case before the respondent No. 2-Pr. CIT scheduled on 25.07.2018 for which date an adjournment came to be sought for the reason stated by the counsel of the petitioner and further on the adjourned date of hearing on 10.09.2018 another request for adjournment was sought for the reason stated by the counsel for the petitioner.

13. Taking cognizance of the absence of the petitioner for the date of hearing fixed on 10.09.2018 and also in absence of any written reply from the petitioner's end, the respondent No. 2- Pr. CIT came to entertain an opinion that petitioner has nothing to say in the matter other than what has been stated in the petition under Section 264. The respondent No. 2- Pr. CIT upon self-consideration of the matter and of the report submitted by the concerned Assessing Officer came up with a two-liner closure of the case by saying that there is no ground to interfere in the order of the Assessing Officer, which is based on the facts of the case. Said petition under Section 264 of the Income Tax Act, 1961 which being a revision, came to be dismissed by the respondent No. 2- Pr. CIT vide his impugned order dated 22.10.2018.

14. It is against this adjudication that the petitioner came up with the present writ petition filed on 22.04.2019 assailing the impugned order on the grounds as stated in the writ petition.

15. From the facts and circumstances of the case as are drawn out from the pleadings and the record, this Court is of the opinion that the manner of passing of the impugned order by the respondent No. 2 fell short of fairness of procedure. Firstly, in absence of the representation from the petitioner's end, the petition came to be disposed of without citing reason as to why the petitioner's reason for adjournment was not granted for putting the petitioner on caveat that on account of refusal of adjournment, the case was to be taken up for hearing on merits on the next date. Even if the petitioner's presence was not to be of any purpose in the estimate of the respondent No. 2-Pr. CIT for enabling adjudication of the revision petition on its merits, we find that the order impugned does not contain any reason whatsoever as to on what basis the respondent No. 2- Pr. CIT came to uphold the validity of the order of the Assessing Officer questioned by the petitioner in the revision petition, more particularly when from the report submitted by Assessing Officer before the respondent No 2, the enlisted notices issued to the petitioner were for and at the address of G-Gangoo Agency, A-296, Maglic Park Azad pur, Delhi, with which the petitioner claims to have no relation and whereas the show cause notice dated 17.01.2017 came to be addressed to the petitioner at his actual address i.e., C-83, Block-C, Mahendru Enclave Delhi-110009. The Assessing Officer in his order dated 17.01.2017 did not mention about the fact that from his end all the prerequisite notices had been sent to the petitioner at actual address to which there had come no response. Further the concerned Assessing Officer had also not mentioned in his said communication dated 17.01.2017 as to how he come to address this

particular communication to the petitioner at his new address C-83, Block-C, Mahendru Enclave Delhi-110009.

16. This procedural aspect ought to have been taken into consideration by the respondent No. 2- Pr. CIT in exercise of revisional jurisdiction so as to be satisfied about the procedural fairness of the proceedings at the end of the Income Tax Officer ward 3(2), Srinagar. Thus, we find that even if on the merits of the case the petitioner may not succeed to evade the consequences as envisaged in terms of the communication dated 17.07.2017 of the Income Tax Officer ward 3(2), Srinagar, but still upon an opportunity of being heard in meeting the requirement of rules of natural justice would have stood well served taking the matter to its logical end.

17. In the light of the aforesaid, we set aside the impugned order of the respondent No. 2-Principal Commissioner Income Tax, J&K Jammu and direct rehearing of the matter by the respondent No. 2-Principal Commissioner Income Tax, J&K Jammu. We direct the petitioner to present himself before the respondent No. 2-Pr. CIT on 2nd of November 2023 upon which appearance before the respondent No. 2- Pr. CIT the proceedings in the revision petition submitted by the petitioner shall be resumed and the same shall be concluded and decided on merits within a period of two months by the respondent No. 2- 2-Principal Commissioner Income Tax, J&K, Jammu.

18. **Disposed** of as above.

(Rahul Bharti)
Judge

(Tashi Rabstan)
Judge

SRINAGAR:
13 .10.2023
“Mir Arif”

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| 1) Whether the judgment is Reportable? | Yes/No. |
| 2) Whether the judgment is Speaking? | Yes/No. |