IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:18.07.2016

| Date of Reserving the Order | Date of Pronouncing the Order |
|---|---|
| 15.07.2016 | 18.07.2016 |

Coram

The Hon'ble Mr.Justice T.S. SIVAGNANAM

W.P.No.20848 of 2016

M/s.Advantage Strategic Consulting Pvt., Ltd.,
Rep., by its Director,
Mr.Ravi Visvanathan,
Flat 3-B, Bajaj Apartments,
7/4, Nandanam Extension Main Road,
Chennai - 600 035.
... Petitioner

Vs

1.Union of India,
Rep., by Secretary,
Ministry of Finance,
North Block,
New Delhi - 110 001.

2.The Joint Director of Income Tax (Inv)
Unit 3(2),
Income Tax Department,
No.46, Nungambakkam High Court,
Chennai - 600 034.

3.The Deputy Director of Income Tax (Inv)
Unit 3(2),
Income Tax Department,
No.46, Nungambakkam High Court,
Chennai - 600 034.

4.The Deputy Director of Income Tax (Inv),
Unit 4(1),
Income Tax Department,
No.46, Nungambakkam High Court,
Chennai - 600 034. ... Respondents

Prayer :-These Writ Petitions are filed under Article 226 of the Constitution of India, seeking for a Writ of Declaration to declare that entire survey conducted by the officers of the Income Tax Department under Section 133A of the Income Tax Act, 1961 on the 1st and 2nd of December, 2015, in the business premises of the petitioner and the residence of the Directors of the petitioner and the consequential summons proceedings under Section 131 of the Income Tax Act, 1961 culminating in the visit of the 2nd and 3rd respondents to the residences of the Directors of the petitioner on 15th June 2016 to issue summons under Section 131 of the Income Tax Act and take evidence are illegal, malafide, abuse of powers, ultra vires the Income Tax Act, without jurisdiction and without authority of law.

For petitioner .. Mrs.Dr.Anita Sumanth for
Mr.R.Parthiban

For Respondents .. Mr.G.Rajagopal,
Addl., Solicitor General of India for
Mr.T.Promod Kumar Chopda

O R D E R

Heard Dr.Anita Sumanth learned counsel for Mr.R.Parthiban, learned counsel appearing for the petitioner, Mr.G.Rajagopal, learned Additional Solicitor General of India appearing for Mr.T.Promod Kumar Chopda, learned Standing counsel for the respondents.

2. The petitioner is a private limited company, who seeks for a Writ of declaration to declare the entire survey conducted by the officers of the Income Tax Department, under Section 133A of the Income Tax Act on 01.12.2015 and 02.12.2015 in the business premises of the petitioner and the residences of the Directors of the petitioner and the consequential summons, proceedings under section 131 of the Income Tax Act culminating in the visit of the 2nd and 3rd respondents to the residences of the Directors of the petitioner on 15.06.2016 to issue summons under Section 131 of the Income Tax Act and take evidence as illegal, malafide, abuse of powers, ultra vires the Income Tax Act, and without jurisdiction.



3. In the affidavit filed in support of the Writ Petition more particularly in the grounds, the petitioner would contend that the object of the survey and summons proceedings is not bonafide; refusal to give copies of the sworn statements made by the Directors and Consultant of the petitioner amounts to violation of principles of natural justice; the visit of the third and fourth respondents to the residences of the Directors of the petitioner to serve summons and take evidence under Section 131 of the Act is without authority of law; that the

respondents 3 and 4 are not the Assessing Officer of the Directors and Consultant of the petitioner and that there is no assessment proceedings of the Directors and Consultant of the petitioner pending before the third and fourth respondents and issuance of repeated summons under Section 131 of the Income Tax Act on the Directors and Consultant of the petitioner as 'assessee' is without jurisdiction and hence, all the summons proceedings pertaining to the Directors and Consultant of the petitioner under Section 131 of the Income Tax Act at the instance of the respondents 3 and 4, is without jurisdiction and null and void.

4. The Writ Petition was heard for admission on 20.06.2016. The learned counsel for the petitioner submitted that pursuant to survey, statements were recorded from Directors and Employees of the petitioner company and request has been made for furnishing the copies of those statements and inspite of certain communications emanating from the department, the copies of the statements have not been furnished.

5. The learned Standing counsel appearing for the respondent Department accepted and sought time to get instructions with regard to the supply of the copies of the statements recorded from the Directors/Employees and Chartered Accountants of the petitioner company and the following order was passed:-

> The learned counsel for the petitioner submitted that pursuant to the Survey conducted, certain statements were recorded from the Directors and employees of the petitioner company and a request was made by the Directors to the third respondent to furnish them copies of those statements. The third respondent, by reply dated 24.5.2016, addressed to one of the Directors, stated that in response to the summons issued to him on 27.04.2016, he has appeared and a sworn statement under Section 131 of the Income Tax Act was recorded on 04.05.2016. In the said sworn statement, it was stated that the Director will verify and provide details by 09.05.2016. However, the same has not been provided inspite of telephonic reminders. It was further stated that the details to be submitted as per sworn statement recorded on 04.05.2016, shall be furnished immediately, on receipt of the letter dated 24.05.2016, in order to complete the proceedings at the earliest, failing which necessary proceedings would be initiated as per the Income Tax Act.

2. It is submitted by the learned counsel for the petitioner that the statements have been recorded from six persons, of whom Mr.M.Rajesh, Mr.CBN Reddy and Mr.Ravi Visvanathan are the Directors of the petitioner company and Mr.Vishakh Rao and Mr.S.Mohan are its employees and Mr.R.Balachandran is the Chartered Accountant.

3. From the documents placed in the typed set, it appears that the petitioner as well as the persons, from whom statements were recorded, have made requests for supply of copies of the statements recorded from them. From the communication dated 24.05.2016, it appears that the third respondent had not specifically dealt with the request made by the Director to furnish copy of the sworn statement nor there is any specific refusal to furnish the same. By communication dated 08.06.2016, addressed to the petitioner's company, the third respondent has stated that the sworn statement of the Directors as well as the employees of the petitioner company taken during the course of survey proceedings will be provided as and when it is proposed to be used as evidence against the company or its Directors or its employees. Further, the petitioner was informed that to obtain the copies of the impound document, the petitioner must make a payment of Rs.1000/-, to the Government account and furnish challan to the office of the third respondent after which copies will be made available to the petitioner. One of the Directors Mr.C.B.N.Reddy, was also informed on the same lines by letter dated 08.06.2016. Subsequently summons have been issued under Section 131 of the Act and the petitioner and other Directors have been submitting written representations to the summons and on 15.6.2016, the third respondent has recorded a statement under Section 131 of the Act, in the residence of the Director Mr.CBN Reddy. Thereafter, summons have been issued under Section 131 of the Act, calling upon the said persons to personally attend the camp office, which is the residence of one of the Directors of the petitioner company.

4. The learned Standing counsel appearing for the respondents submitted that he will obtain instructions from the

Department with regard to supply of the copies of the statements recorded from the Directors, employees and Chartered Accountant of the petitioner company. The learned Standing Counsel further submitted that he has got instructions to state that the third respondent and their officers will not visit the residence of the Directors for the purpose of implementing the summons under Section 131 of the Act, till the matter is heard and decided.

List the matter on 27.6.2016.

6. When the matter was taken up on 15.07.2015, the learned Additional Solicitor General of India raised a preliminary objection with regard to the request for copies of the statements. It is submitted that the petitioner herein is a company incorporated under the Companies Act, the Director, who has sworn to the affidavit in this Writ Petition has not given any statement, the persons, who have given statements have not approached this Court and therefore, the Department is not in a position to give the statements recorded from other persons to the petitioner, as the investigation is in process. Further, the learned Additional Solicitor General of India submits that if the person, who has given the statement comes to the office of the fourth respondent and makes a request for perusal of his statement, the same will be readily obliged by the fourth respondent, however, the question of providing copies or permitting perusal of the statements given by other persons, cannot be entertained, as it would hamper the investigation. Further, it is submitted that in terms of Section 207 Cr.P.C., the copies of the statements would be furnished only when the charge sheet is laid applying the said analogy as the investigation is in process, the request made by the petitioner in their letter dated 10.05.2016, cannot be acceded to. Further, it is submitted that in taxation matters, the Courts will be slow to interfere and the remedy under Article 226 of the Constitution cannot be invoked. In support of such contention, reliance has been placed on the decision of the Hon'ble First Bench of this Court in the case of Dr.K.Nedunchezhian vs. The Deputy Commissioner of Income-Tax, Central Circle, Salem reported in (2005)-2 MLJ-243. It is further submitted that even under the Right to Information Act in terms of Section 8(h), information which would impede the process of investigation, cannot be furnished. Further, in terms of the second schedule to the Right to Information Act, the provisions of the said Act, would not apply to the Directorate General of Income Tax (Investigation).

7. While answering the preliminary objection, the learned counsel for the petitioner submitted that the investigation commenced by the department is against individuals, who are connected with the company, all notices which have been issued by the respondents 3 and 4 contain the same file number and the person, who is targeted, is the company and the petitioner therefore, sought for copies of the statements by letter dated 10.05.2016. It is submitted that even if individuals are not entitled to see the statements given by others, the petitioner company is entitled to see those statements. It is further submitted that the specific ground raised by the petitioner in ground (A) of the affidavit is that the entire survey is an eyewash and the respondent have not filed any counter affidavit and the Income Tax Department cannot make a roving enquiry in respect of other information. With regard to the contention that even under the RTI Act, information cannot be given, the said submission is not tenable, since on first principle, the petitioner is entitled to the copies, as it is the petitioner's own case. After referring to the replies given by the Department, dated 24.05.2016 and 08.06.2016, it is submitted that the fourth respondent has conveniently omitted to refer to the request made by the petitioner for giving the copies of the statements. Further, it is submitted that one of the Directors by name, S.Baskararaman, has also made a request to the Department to give the copy of the statement and as many as 100 questions were asked to him and no reasonable person can be expected to remember all the answers given to those 100 questions. Therefore, it is contended that non-furnishing of the statements would be in violation of the principles of natural justice. Further, the learned counsel submitted that the relief sought for in the main Writ Petition is for a larger relief to declare the entire survey conducted by the officers under Section 133A of the Act in the business premises of the petitioner and the residences of the Director is illegal and for considering such a prayer, counter should have been filed by the Department.

8. After considering the submissions of the learned counsels appearing for the parties and perusing the materials placed on record, the following undisputed facts emerge:-

The petitioner is a private limited company and it is represented by its Director Mr. Ravi Visvanathan, who has sworn to the affidavit in support of the Writ Petition. It is admitted by the petitioner that Mr.Ravi Visvanathan, has not given a statement. The statements have been given by other Directors and Consultant. Admittedly, other Directors, Consultant and employees. The names of the persons from whom statements have been recorded and the dates on which it were recorded, is as follows:-

| Name | Date of Statements |
|---|---|
| R.Balachandran | 01st December 2015 |
| Vishakh Rao | 01st December 2015 |
| S.Mohan | 01st December 2015 |
| M.Rajesh | 01st December 2015<br>15th December 2015 |
| C.B.N.Reddy | 15th December 2015 |
| S.Bhaskararaman | 04th May 2016 |

9. It is not in dispute that none of the persons, who have given statements as mentioned above, have approached this Court for furnishing the copies of the statements. The petitioner, the company represented by one of its Directors, who has not given a statements, now seeks for copies of the statements given by the other persons. In such factual scenario, the petitioner has no vested right at this juncture to insist upon copies of such statements. The plea that all those individuals are connected with the company and the company is being targeted, is hardly a ground to accede to the prayer made by the petitioner. Further, the plea that even if the other persons, who have given the statements, are not entitled to look into the statements given by others, but the petitioner is entitled to look into those statements is a flawed submission, especially when, investigation is going on and each individual has given statements. Therefore, acceding to the prayer sought for by the petitioner would definitely hamper the investigation.

10. The learned counsel for the petitioner submitted that the petitioner has sought for a larger relief wherein they seek for quashing the entire survey which commenced in December 2015. The survey was conducted in various places and the residences of the other Directors/Employees/Consultant etc., and those persons have not joined the petitioner in seeking such a prayer. That apart, if the prayer sought for is to be considered, it would result in interdicting an investigation process. What the petitioner seeks to indirectly achieved is to injunct a summon, which cannot be done, that too in exercise of jurisdiction under Article 226 of the Constitution. The plea of malafides has not been specifically pleaded or established, mere use of the expression is not sufficient.

11. Further, the fourth respondent has not foreclosed the petitioner's request and by communication dated 08.06.2016, a reply has been sent to the Principal Officer of the petitioner company that copy of the sworn statement of the Directors as well as the employees of the company taken during the course of

survey proceedings, will be provided, as and when it is proposed to be used as evidence against the company or its Directors or its Employees. Thus, it is evident that till date the investigation is yet to be completed and their statements are yet to be used against any persons much less the company.

12. In the light of the above, this Court is of the view that the prayer sought for cannot be granted for the reasons set out in the preceding paragraphs, as it would amount to interference of an investigation and injuncting a summon procedure.

Hence, the Writ Petition fails and it is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

1.Union of India,
Rep., by Secretary,
Ministry of Finance,
North Block,
New Delhi - 110 001.

2.The Joint Director of Income Tax (Inv)
Unit 3(2),
Income Tax Department,
No.46, Nungambakkam High Court,
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Unit 4(1),
Income Tax Department,
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+1 cc to Mr.R.Parthiban Advocate sr.40345
+1 cc to Mr.T.Pramod Kumar Chopda Standing Counsel of IT sr.40096

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