

Reserved on : 20.02.2018
Delivered on : 27.02.2018
IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 27.02.2018

CORAM

THE HON'BLE MR. JUSTICE M.DURAI SWAMY

W.P.No.33318 of 2017
and W.M.P.Nos.36760 of 2017 & 2328 of 2018

Manjula Athur

.. Petitioner

Vs.

The Income Tax Officer,
Non Corporate Ward 13 (5),
Annexe Building,
Aayakkar Bhawan,
R.No.402, 4th Floor,
No.121, Nungambakkam High Road,
Chennai - 600 034,
Now at
Wanaparthi Block, 7th Floor, R.No.716,
No.121, Nungambakkam High Road,
Chennai - 600 034.

.. Respondent

Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari calling for the records in PAN AVPPM6061K dated 19.12.2017 relating to Assessment Year 2013-14 on the file of the respondent, quash the same. (Prayer amended as per order dated 30.01.2018 in W.M.P.No.2326 of 2018 in W.P.No.33318 of 2017)

For Petitioner : Mr.G.Baskar
For Respondent : Mr.J.Narayanawamy,
Standing Counsel

O R D E R

The petitioner has filed the above Writ Petition to issue a Writ of Certiorari to call for the records dated 19.12.2017 relating to Assessment Year 2013-14 on the file of the respondent and to quash the same.

2.It is the case of the petitioner that for the Assessment Year 2013-14 she filed return of income on 30.12.2014, declaring a total income of Rs.10,94,980/- and net agricultural income of Rs.1,60,00,000/-. Due to change of Auditor, the petitioner was

not having the return of income or other related documents with her. The respondent issued a Notice under Section 148 of the Income Tax Act dated 08.06.2016, for reopening the assessment for the Assessment Year 2013-14 by stating that the respondent had reasons to believe that the income chargeable to tax for that year had escaped assessment. The respondent issued Notice under Section 143(2) dated 07.06.2016 calling the petitioner to attend the hearing on 14.06.2017 in connection with the return of income submitted by the petitioner on 30.12.2014 for the Assessment Year 2013-14. Thereafter, the respondent issued another Notice under Section 142(1) read with Section 129 dated 07.06.2017 requiring certain details to be furnished in connection with the Assessment Year 2013-14.

2.1. It is the case of the petitioner that her representative had been appearing before the respondent and even on 29.09.2017, the authorized representative appeared and submitted the details of the land and required further time to file the required documents in view of change of Auditor and non-availability of back papers. On 02.11.2017, the petitioner's authorized representative filed the return of income, bank statements and copy of agricultural land documents along with other required documents for the Assessment Year 2013-14 before the respondent. On 25.10.2017, the respondent required the petitioner to appear on 03.11.2017 with certain required documents. Thereafter, the respondent issued the summons dated 07.11.2017 directing the petitioner to produce the Books of Accounts. On 10.11.2017, the petitioner informed the respondent her inability to appear on 10.11.2017 enclosing a Medical Certificate that she was suffering from Osteo Arthritis and undergoing treatment.

2.2. On 20.11.2017, the respondent issued the summons under Section 131/137 of the Income Tax Act to appear on 23.11.2017 along with the documents. On 23.11.2017, the respondent also issued a show cause Notice under Section 271(1)(b) calling upon the petitioner to explain why penalty should not be levied for the failure on her part to appear before the respondent. The respondent issued another hearing Notice on 01.12.2017 fixing the case on 05.12.2017 requiring further details. The petitioner's authorized representative, by his letter dated 05.12.2017, requested the respondent to grant time, for submission of the documents, till 11.12.2017. On 05.12.2017, the respondent had issued a Notice of hearing on 08.12.2017. On 08.12.2017, the petitioner requested the respondent to provide copies of the documents filed by her erstwhile Auditor and the Notices sent by the respondent. On 12.12.2017, the petitioner approached the respondent with a letter dated 12.12.2017 requesting the reasons recorded for reopening the assessment. However, the respondent refused to accept the letter, therefore, the petitioner sent the letter by Speed Post and E-mail to the

respondent. On 12.12.2017 itself, the respondent issued a show cause Notice as to the completion of assessment under Section 144 on or before 18.12.2017. In these circumstances, the petitioner has filed the above Writ Petition.

3. According to the respondent, the petitioner was given several opportunities to submit the documents. However, she has not utilized the opportunities and filed the documents before the respondent. The Assessing Officer had passed the assessment order on 19.12.2017 and the same was also despatched on the same day. The respondent had also stated that the copy of the order sent to the petitioner was returned with an endorsement "left" on 22.12.2017 and that of AR with postal endorsement as "refused" on 21.12.2017. Further, the respondent has stated that the petitioner had not appeared on 18.12.2017 either in person or through authorized representative by filing any power of authorization. Further, the petitioner had also filed return of income electronically on 20.12.2017 in response to the Notice issued under Section 148, along with the letter dated 20.12.2017 qualifying the return of income. The filing of the said return and letter seeking reasons after passing of reassessment order, is nonest in law. The reopening of the assessment proceedings and passing of reassessment order under Section 144 read with 147 is valid in law, in as much as, the same is passed within a period of four years from the end of the Assessment Year and when no regular assessment under Section 143 (3) was made.

4. Heard Mr.G.Baskar, learned counsel appearing for the petitioner and Mr.J.Narayanaswamy, learned standing counsel appearing for the respondent.

5. Mr.G.Baskar, learned counsel appearing for the petitioner submitted that the impugned order dated 19.12.2017 passed by the respondent is in violation of principles of natural justice for the reason that the petitioner was not given due opportunity of hearing and opportunity to produce the documents. The learned counsel submitted that when the petitioner has asked for the reasons for reopening the assessment, the Assessing Officer is bound to furnish the same and in the absence of providing the reasons, the impugned order is liable to be set aside.

5.1. In support of his contentions, the learned counsel relied upon an unreported judgment dated 29.01.2018 made in W.P.No.27598 of 2008 [T.V.Mylsamy Vs. The Deputy Commissioner of Income Tax, Central Circle-II, 63, Race Course Road, Coimbatore - 18 and another] wherein this Court held as follows:

"...

7. The mandate, as laid down by the Hon'ble Supreme Court in the case of GKM Drivershafts (India) Ltd. Vs. ITO [reported in (2003) 259 ITR 19] requires

that when an assessee seeks reasons for reopening the assessment, the Assessing Officer is bound to furnish the same. On receipt of the reasons, the assessee is entitled to submit their objections, which should be considered and a speaking order should be passed. The reasons cannot be inferred from the reply given by the Assessing Officer dated 12.8.2008. The reasons for reopening should find a place in the files of the Assessing Officer for the relevant Assessment Year and those reasons need to be communicated to the assessee so as to enable them to file their objections to the reopening proceedings. Therefore, this Court is of the considered view that the reply sent by the Assessing Officer on 12.8.2008 is of little avail. Even assuming that the assessee had partial knowledge of the reasons for reopening the assessment, that would not be sufficient compliance of the mandate in the light of the decision in the case of GKN Driveshafts (India) Ltd.

8. Accordingly, the writ petition is disposed of with the following directions:

(i) The first respondent shall consider the request of the petitioner for furnishing the reasons for reopening the assessment for the year 2002-03 within a period of 15 days from the date of receipt of a copy of this order.

(ii) On furnishing of such reasons for reopening, the petitioner is directed to file their objections/reply, within 30 days thereafter, after which, the first respondent shall consider and redo the assessment by following the mandate laid down in GKN Driveshafts (India) Ltd.

(iii) It is made clear that neither party shall take advantage of the fact that the writ petition has been pending from 2008 onwards till date. It is needless to state that it is open to the assessee to raise all the grounds while submitting their objections to the reasons for reopening the assessment on being furnished by the Assessing Officer."

6. Mr. J. Narayanaswamy, learned standing counsel appearing for the respondent submitted that though sufficient opportunity was given to the petitioner, she has not utilized the same, therefore, the order passed by the respondent is just and proper.

7. On a careful consideration of the materials available on record and the submissions made by the learned counsel on either side, it could be seen that the petitioner has filed the return of income for the Assessment Year 2013-14 belatedly on 30.12.2014. Admittedly, no scrutiny assessment under Section 143 (3) was made. According to the respondent, as per the Annual

Information Return received from the Bank and Sub Registrar's Office, the petitioner had deposited cash of Rs.23.54 lakhs and had purchased immovable properties for Rs.33 lakhs. The return of income filed by the assessee also reflected the receipt of agricultural income of Rs.1.6 crores. In these circumstances, the respondent initiated reassessment proceedings by issuing Notice under Section 148 dated 08.06.2016, which is within four years from the end of the Assessment Year.

7.1. On 07.06.2017, the respondent issued a Notice under Section 142(1) calling for the details from the petitioner with respect to the Annual Information Return received from the Bank and Sub Registrar's Office. The petitioner was asked to provide the details viz., brief note on business, computation of income for the Assessment Year 2013-14 as well as the prior and subsequent Assessment Year, copies of books of accounts and bank statement, copy of the Sale Deed, copy of the document of the agricultural land from which the agricultural income was shown along with Patta, Chitta and Adangal. The information regarding immovable properties was also sought from the Sub Registrar's Office.

7.2. The petitioner was given opportunities to produce the records on 14.06.2017, 07.07.2017 and 06.09.2017. However, there was no response from the petitioner. Thereafter, on 29.09.2017, another authorized representative sought time till 10.10.2017 stating that the documents were in Telugu language and nothing can be inferred and the documents need to be translated. However, there was no response on 10.10.2017 and the case was reposted on 03.11.2017, vide letter dated 25.10.2017. The authorized representative, by letter dated 02.11.2017, enclosed a copy of the return of income for the Assessment Year 2013-14 and the bank statement for the period from 01.04.2012 to 31.03.2013. The representative was granted time to provide the details of the agricultural income and the crops cultivated in the land. The hearing was fixed on 06.11.2017, however, on that day also, there was no response from the petitioner. Therefore, summons were issued on 07.11.2017 asking the petitioner to appear on 10.11.2017 and submit the details. On 10.11.2017, the petitioner filed a letter stating that she was staying at Tripathi taking medical treatment and will not be able to appear in person and sought condonation of non-appearance. Taking into consideration the age and health condition of the petitioner, another summons was issued on 20.11.2017 calling upon the authorized representative to furnish the details on 23.11.2017 and even on that day, there was no response.

7.3. By letter dated 24.11.2017, the petitioner was asked to show cause why the agricultural income of Rs.1.6 crores should not be assessed to tax as income from other sources, investment in immovable properties for Rs.33 lakhs be assessed as

unexplained investment under Section 69 for failure to prove the source of purchase and cash deposit of Rs.23.54 lakhs be assessed as unexplained cash under Section 68. The hearing was fixed on 29.11.2017 and on that day also, there was no response on the side of the petitioner. By letter dated 01.12.2017, the respondent called upon the petitioner to produce additional details and the case was posted on 05.12.2017. On 05.12.2017, the petitioner sought time till 11.12.2017. Thereafter, the case was adjourned to 08.12.2017. Again the case was adjourned to 18.12.2017 and even on that day, there was no response from the petitioner. Hence, the respondent had passed the assessment order on 19.12.2017 and despatched the same to the petitioner. Therefore, from the above details given by the respondent, it is clear that the respondent had given sufficient opportunities to the petitioner. However, the petitioner had failed to utilize those opportunities and produce the documents before the respondent. Therefore, the contention that the petitioner was not given due opportunity, cannot be accepted.

8. However, on the other ground that furnishing the reasons for reopening the assessment is concerned, this Court in W.P.No.27598 of 2008 dated 29.01.2018, following the ratio laid down by the Hon'ble Supreme Court in the judgment reported in (2003) 259 ITR 19 [GKM Drivershafts (India) Ltd. Vs. ITO] held that the Assessing Officer is bound to furnish the reasons for reopening the assessment to the assessee when the assessee seeks reasons for the reopening.

9. In the case on hand, though the petitioner has sought for the reasons for reopening the assessment on 12.12.2017, the Assessing Officer has not furnished the reasons recorded for reopening the assessment to the petitioner. In fact, the petitioner had stated that her letter requesting the reasons recorded for reopening the assessment itself was refused, therefore, the petitioner sent the letter by Speed Post and E-mail to the respondent. In spite of the same, the respondent had not furnished the reasons recorded for reopening the assessment to the petitioner.

10. Therefore, on this ground, following the dictum laid down by the Hon'ble Supreme Court in the judgment reported in (2003) 259 ITR 19 [GKM Drivershafts (India) Ltd. Vs. ITO] and the order passed by this Court in W.P.No.27598 of 2008 dated 29.01.2018, the impugned assessment order dated 19.12.2017 is liable to be set aside. Accordingly, the same is set aside.

11. The respondent is directed to consider the request of the petitioner for furnishing the reasons recorded for reopening the assessment for the year 2013-14 within a period of fifteen (15) days from the date of receipt of a copy of this order. On furnishing of such reasons for reopening, the petitioner is

directed to file her objections/reply within thirty (30) days thereafter, after which, the respondent shall consider and redo the assessment by following the mandate laid down in (2003) 259 ITR 19 [GKM Drivershafts (India) Ltd. Vs. ITO], as expeditiously as possible.

12.With these observations, the Writ Petition is allowed. No costs. Consequently, the connected miscellaneous petitions are closed.

-s/d-

Deputy Registrar

True Copy

Sub-Assistant Registrar

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To

The Income Tax Officer,
Non Corporate Ward 13 (5),
Annexe Building,
Aayakkar Bhawan,
R.No.402, 4th Floor,
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Now at
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+1 cc to M/s.G.Baskar Advocate sr 14634

+1 cc to M/s.J.Narayanaswamy Advocate sr 14892

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