IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 27.12.2018

Coram

The Honourable Ms.Justice P.T.ASHA

W.P.No.34626 of 2018

and

W.M.P.No.40141 of 2018

P.Ramamohan Rao

...Petitioner

Versus

The Deputy Commissioner of Income Tax
Central Circle 2 (4)
Investigation Wing
Room No.111, 1st Floor,
New No.46, M.G.Road,
Chennai - 600 034.

...Respondent

This Writ Petition is filed under Section 226 of the Constitution of India praying for an issuance of a Writ of Certiorarified Mandamus calling for the records of the respondent herein pertaining to the Order bearing No.DCIT/CC 2 (4)/2018-19 dated 20.12.2018 and quash the same and consequentially direct the respondent to permit the petitioner to cross examine the witnesses relied upon by the respondent as set forth in the petitioner's application dated 11.12.2018.

For Petitioner : Ms.Pushya Sitaraman,
Senior Counsel
for Mr.Srinath Sridevan

For Respondent : Mr.A.P.Srinivas,
Senior Standing Counsel

O R D E R

The above Writ Petition has been filed by the petitioner seeking issue of a Writ of Certiorarified Mandamus calling for the records of the respondent pertaining to the order bearing No.DCIT/CC 2 (4)/2018-19 dated 20.12.2018 and quash the same and consequentially direct the respondent to permit the petitioner to cross examine the witnesses relied upon by the respondent as set forth in the petitioner's Application dated 11.12.2018.

2.1. It is the case of the petitioner that he was a Chief Secretary in the Government of Tamil Nadu and discharging his duty with full sense and responsibility.

It is his further case that he has been made a scape goat by Politicians and the case has been foisted on him. He would further contend that a raid was conducted in his premises and he has given a statement with respect to his son's involvement in his business.

2.2. On 10.12.2016, the Officers of the Income Tax Department had come to his residence and a search and seizure operation under Section 132 of Income Tax Act, was being undertaken with respect to his son's affairs. He would further contend that he had given full access to his residence and to all the papers. The raid had gone on for a few days and he did not interfere or intervene in any of the activities of the Tax Officers though, according to him, the raid was clearly illegal.

2.3. After the search and seizure operation, he came to know that he had been implicated without any authority of law and on 31.07.2018, the Income Tax Department had issued him with a Notice under Section 153A of the Income Tax Act (hereinafter referred to as "Act"), purporting to do assessment on him with respect to the search and seizure operation conducted against his son. The aforesaid Notice was later withdrawn by the respondent as they realised their own blunder and on the same date i.e., 24.09.2018, the Department had issued him yet another Notice under Section 153C of the Act.

2.4. On going through the file, the petitioner had learnt that the entire proceedings under Section 153C of the Act was being undertaken on the basis of the statement made by one K.Srinivasalu, who was linked with the business concern under the name and style of SRS Mining. The petitioner would further contend that he was aware that the said K.Srinivasalu had retracted his statement and he was doubly sure that the entire proceedings of the Department were baseless.

2.5. The petitioner made an Application to the respondent on 11.12.2018 requesting permission to cross examine the said K.Srinivasalu, whose statement has been relied upon by the Department. By an order dated 12.12.2018, the respondent had also granted permission to the petitioner to cross examine the said K.Srinivasalu. The cross examination was fixed on 19.12.2018 & 20.12.2018. On both those days, it was the Officers, who had examined K.Srinivasalu and the petitioner would submit that he was present at the time of the examination. The said K.Srinivasalu had retracted his earlier statement and when the petitioner was waiting to cross examine the witness at 06:00 p.m on 20.12.2018, the respondent Officer has passed the impugned order which reads as follows:

> "While answering to the Q.No.3 of his deposition he has stated that, "I confirm that these books are maintained in this office by me. The notings in these books are written by me and I confirm that it is my handwriting. As per the instructions of partners Shri.S.Ramachandran, Shri.J.Sekar and Shri.K.Rathinam only. I am maintaining these notings. The entries found are incidental expenses paid to various persons". However, during the examination-in-chief conducted on 19.12.2018 & 20.12.2018 in person, the witness became hostile. Therefore, the cross-examination requested by Shri Rama Mohana Rao is not considered."

3. Ms.Pushya Sitaraman, learned Senior Counsel appearing on behalf of the petitioner's counsel would contend that the failure on the part of the respondent to permit the petitioner to cross examine the said K.Srinivasalu is fatal to his case and that he should have been given an opportunity to cross examine the witness, particularly, when the respondent is relying upon the evidence of said K.Srinivasalu. She had also contended that the prosecution would rely upon the earlier evidence of the witness and the petitioner would be put to a disadvantage.

4. The fact that the witness had turned hostile would only stand to the benefit of the petitioner as the entire evidence of the witness could be considered and this Court is unable to understand as to how it would be adverse to that of the petitioner. Even if the respondent was to rely on that part of the evidence of K.Srinivasalu which is in their favour they have to let in other reliable evidence to corroborate the same. During the course of the arguments, it was informed by the learned Senior Counsel that copies of the evidence had not been provided to the petitioner and this Court directs the respondents to give copies of the evidence to the petitioner.

5. I do not find any infirmity in the order of the respondent in refusing the request for cross examination since the witness had turned hostile to the respondent's contentions. Needless to state that in the light of the amendment to Section 154 by insertion of Sub Section (2) by Act 2 of 2006 w.e.f. 16.04.2006, it is well open to the petitioner to work out his right in accordance with law on receipt of the evidence directed to be given.

6. In the result, this Writ Petition shall stand dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

sms/mrr

To

The Deputy Commissioner of Income Tax
Central Circle 2 (4)
Investigation Wing
Room No.111, 1st Floor,
New No.46, M.G.Road,
Chennai - 600 034.

+1cc to Mr.Srinath Sridevan , Advocate SR.No. 90090
+1cc to Mr. A.P.Srinivas,, Advocate SR.No. 90087

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A.SK(29/01/2019)