The Hon'ble Sri Justice Raghvendra Singh Chauhan

and

The Hon'ble Sri Justice M.Satyanarayana Murthy

Writ Petition No.24114 of 2017

Order: (per Hon'ble Sri Justice Raghvendra Singh Chauhan)

The Andhra Pradesh Olympic Association, the petitioner, is aggrieved by the fact that respondent Nos.1 and 2, the Principal Chief Commissioner of Income Tax, Andhra Pradesh & Telangana, and the Accessing Office, Income Tax Officer, respectively, have issued a PAN number bearing No.AAEAA8451G to respondent No.3, which is also known as 'Andhra Pradesh Olympic Association'.

According to Mr. M.Govind Reddy, the learned Counsel for the petitioner, the dispute is between the petitioner and respondent No.3, who carries the same exact name *i.e.,* "Andhra Pradesh Olympic Association". The dispute relates to legitimacy, for the petitioner on one hand, and respondent No.3 on the other hand, claim themselves to be the legitimate Olympic Association. Petitioner felt aggrieved by the fact that, despite respondent No.3 having the same exact name as theirs, still separate PAN number has been issued to them by respondent Nos.1 and 2. Hence, the present Writ Petition before this Court.

Mr. M.Govind Reddy, learned Counsel for the petitioner, has raised the following contentions before this Court:-

Firstly, the issuance of the PAN Number to respondent No.3, by respondent Nos.1 and 2, is beyond its jurisdiction.

Secondly, since both the petitioner and respondent No.3 bear the same exact name, respondent Nos.1 and 2 were required to grant an opportunity of hearing to the petitioner before issuing the PAN number to respondent No.3. As the said requirement has not been fulfilled, the principles of natural justice have been violated by respondent Nos.1 and 2. Thus, the issuance of the PAN number to respondent No.3 is *per se* illegal. Hence, a Mandamus should be issued by this Court declaring the action of respondent Nos.1 and 2 in issuing the PAN number to respondent No.3 as absolutely illegal.

On the other hand, Mr.K.Raji Reddy, the learned Standing Counsel for respondent No.1, Income Tax Department, advanced the following submissions:-

Firstly, it is well within the jurisdiction of the Income Tax Department to issue the PAN number to an income tax assessee. For, the said power flows from Section 139A of the Income Tax Act, 1961 (for short 'the Act'). Therefore, issuance of the PAN number is, absolutely, within the jurisdiction of respondent No.1.

Secondly, even as per Rule 114 of the Income Tax Rules, 1962 (for short 'the Rules'), which prescribes the procedure for issuance of the pan number, there is no requirement that an opportunity of hearing has to be given to an assessee bearing the same name. Therefore, according to the learned Counsel, the act of respondent Nos.1 and 2 in issuing the PAN number to respondent No.3 is absolutely legal.

Thirdly, according to the learned Standing Counsel, the letters in the pan number have a logic behind them: in the present case, the first three letters *i.e.,* 'AAE' relate to the series being used by the Income Tax Department; the fourth letter 'A' reflects the status of the assessee; the fifth letter 'A' refers to the first letter of the surname of the PAN card holder; the numerical numbers '8451' again refer to the series used by the Income Tax Department; the last letter, in this case, the letter 'G', refers to a check number of a series between A to Z.

Lastly, according to the learned Standing Counsel, respondent No.3 happens to be an association of persons as it is a Society registered under the Societies Registration Act, 1860, whereas, the petitioner happens to be a firm registered under the Partnership Act, 1932. Thus, as far as the Income Tax Department is concerned, the petitioner and the respondent are two separate and distinct entities, and, thus, two distinct assessees. Therefore, according to the learned Standing Counsel, the issuance of the PAN number to respondent No.3 cannot be said to be illegal.

Mr. Eranki Phani Kumar, the learned Counsel for respondent No.3, has adopted the arguments of Mr.K.Raji Reddy, the learned Standing Counsel for respondent Nos.1 and 2, and pleaded that since respondent No.3 is an Income Tax assessee, it was legally bound to seek a PAN number from the Income Tax Department. Thus, the Income Tax Department was legally justified in issuing the PAN number to respondent No.3.

Heard the learned Counsel for the parties, and perused the record.

Extract of Section 139A of the Act reads as under:

> *"**139A**. (1) Every person,-*
> *(i) if his total income or the total income of any person in respect of which he is assessable under this Act during any previous year exceeded the maximum amount which is not chargeable to income tax; or*
> *(ii) carrying on any business or profession whose total sales, turnover or gross receipts are or is likely to exceed [five lakh] rupees in any previous year; or*
> *(iii) who is required to furnish a return of income under [sub-section (4A) of section 139; or*
> *(iv) being an employee, who is required to furnish a return of fringe benefits under section 115WD,]*
> *and who has not been allotted a permanent account number shall, within such time, as may be prescribed, apply to the Assessing Officer for the allotment of a permanent account number."*

A bare perusal of the above provision clearly reveals that it not only identifies the assessees, who are required to have a PAN number, but also bestows the power upon the Assessing Officer to issue a PAN number to the assessee.

In the present case, since respondent No.3 is an income tax assessee, it was legally required to have a PAN number. Once the application was filed before the Assessing Officer, the Assessing Officer was well within his power, under Section 139A of the Act, to issue the PAN number to respondent No.3 Thus, the first contention raised by the learned Counsel for the petitioner that the issuance of the PAN number to respondent No.3 is ultravires the jurisdiction of respondent Nos.1 & 2 is clearly untenable.

Rule 114 of the Income Tax Rules, 1962, which deals with the procedure to be adopted for issuance of the pan number, reads as under:

> ***"114.*** *(1) An application under sub-section (1) [or sub-section (1A) or sub-section (2) or sub-section (3)] of section 139A for allotment of a permanent account number shall be made [***] in Form No. 49A [or 49AA, as the case may be]:*
>
> [1]**[Provided** *that an applicant may apply for allotment of permanent account number through a common application form notified by the Central Government in the Official Gazette, and the Principal Director General of Income-tax (Systems) or Director General of Income-tax (Systems) shall specify the classes of persons, forms and formats along with procedure for safe and secure transmission of such forms and formats in relation to furnishing of permanent account number.***]**
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> *(2) An application referred to in sub-rule (1) shall be made,—*
>
> *(i) In cases where he function of allotment of permanent account number under section 139A has been assigned by the [Chief Commissioner or Commissioner] to any particular [Assessing Officer], to that [Assessing Officer];*
> *(ii) In any other case, to the [Assessing Officer] having jurisdiction to assess the applicant.*
>
> *(3) The application referred to in sub-rule (1) shall be made,—*
>
> *(i) In a case where the total income of the person or the total income of any other person in respect of which he is assessable under the Act during any [financial year] exceeds the maximum amount which is not chargeable to income-tax and he has not been allotted any permanent account number, on or before the 31st day of May of the assessment year for which such income is assessable;*
>
> *(ii) In the case of a person not falling under clause (i), but carrying on any business [or profession], the total sales, turnover or gross receipts of which are or is likely to exceed [five lakh rupees] in any [financial year] and who has not*

been allotted any permanent account number, before the end of that [financial year];]

(iii) In the case of a person who is required to furnish a return of income under sub-section (4A) of section 139 and who has not been allotted any permanent account number, before the end of the [financial year];]

(iv) In the case of a person who is entitled to receive any sum or income or amount, on which tax is deductible under Chapter XVII-B in any financial year, before the end of such financial year.]

(v) in the case of a person, being a resident, other than an individual, which enters into a financial transaction of an amount aggregating to two lakh fifty thousand rupees or more in a financial year and which has not been allotted any permanent account number, on or before the 31st day of May immediately following such financial year;

(vi) in the case of a person, who is the managing director, director, partner, trustee, author, founder, karta, chief executive officer, principal officer or office bearer of the person referred to in clause (v) or any person competent to act on behalf of the person referred to in clause (v) and who has not been allotted any permanent account number, on or before the 31st day of May immediately following the financial year in which the person referred to in clause (v) enters into financial transaction specified therein.]"

[*(4) The application, referred to in sub-rule (1)* [*[other than that referred to in the proviso to sub-rule (1)]*] *in respect of an applicant mentioned in column (2) of the Table below, shall be filled in the Form mentioned in column (3) of the said table, and shall be accompanied by the documents mentioned in column (4) thereof, as proof of identity, address and date of birth of such applicant:*

(5) Every person who has been allotted permanent account number as on the 1st day of July, 2017 and who in accordance with the provisions of sub-section (2) of section 139AA is required to intimate his Aadhaar number, shall intimate his Aadhaar number to the Principal Director General of Income-tax (Systems) or Director-General of Income-tax (Systems) or the person authorised by the said authorities.

(6) The Principal Director General of Income-tax (Systems) or Director-General of Income-tax (Systems) shall specify the formats and standards alongwith procedure, for the verification of documents filed with the application [4][*under sub-rule (4), intimation of Aadhaar number in sub-rule (5) and issue of permanent account number*], *for ensuring secure capture and transmission of data in such format and standards and shall also be responsible for evolving and implementing appropriate security,*

> *archival and retrieval policies in relation to furnishing of the application forms for allotment of permanent account* [5][*number, intimation of Aadhaar number and issue of permanent account number*].**]"**

A bare perusal of the above provision clearly reveals that there is no requirement that before assigning any PAN number, the authority has to give an opportunity of hearing to any other assessee having the identical name. Moreover, while the petitioner is a registered firm, respondent No.3 is a registered society. Therefore, as far as respondent Nos.1 and 2 are concerned, the petitioner and respondent No.3 happen to be two distinct entities. Thus, one cannot be confused for the other. Hence, the second contention raised by the learned Counsel for the petitioner that an opportunity of hearing ought to have been given to the petitioner by respondent Nos.1 and 2 is unsustainable.

Since respondent Nos.1 and 2 have followed the procedure prescribed by Rule 114 of the Rules, the act of issuing the PAN number to respondent No.3 is legally sustainable.

For the reasons stated above, this Court does not find any merit in this Writ Petition. It is, hereby, dismissed. No order as to costs.

(Raghvendra Singh Chauhan, J)

(M.Satyanarayana Murthy, J)

Dt: 19th December, 2018
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