IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.03.2020

CORAM

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

W.P.No.13305 of 2013
and
M.P.No.1 of 2013

M.Radhakrishnan ... Petitioner

Vs.

The Assistant Commissioner of Income Tax
Circle – II Erode 638 001.
... Respondent

Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, calling for the records relating to proceedings of the respondent Ref.No.PAN AJLPR2812 D dated 27.03.2013 and quash the same.

For Petitioner : Mr.Niranjan Rajagopalan for
M/s.G.R. Associates

For Respondent : Mrs.Hema Muralikrishnan

O R D E R

According to the petitioner, he is a Cell Tower erection contractor and an Income Tax Assessee on the file of the respondent. With respect to the assessment year 2010-11, he filed his returns. During the assessment proceedings, he was represented by his counsel. On 27.03.2013, as per the direction of the respondent, the petitioner appeared in person and at that time, he was issued with a proceedings, stating that his case was referred for special audit under Section 142(2A) of the Income Tax Act, 1961 for the assessment year in question. Questioning the said proceedings dated 27.03.2013, the petitioner has come up with this writ petition.

2.The learned counsel for the petitioner submitted that without providing due opportunity of being heard to the petitioner, the respondent has issued the proceedings impugned herein and hence, the same is arbitrary, illegal and in violation of the principles of natural justice.

3.The learned counsel appearing for the respondent has fairly conceded the submission so made by the learned counsel for the petitioner.

4.Heard both sides and perused the materials placed before this Court.

5.The challenge made in this writ petition is to the proceedings dated 27.03.2013 issued by the respondent, wherein, the case of the petitioner has been referred to special audit under Section 142(2A) of the Income Tax Act, 1961 for the Assessment Year 2010-11.

6.It is not in dispute that before issuing the impugned proceedings, the respondent has not issued any notice to the petitioner calling upon him to file his objections and has not provided reasonable opportunity of being heard to the petitioner.

7.It is settled law that an order affecting the rights of a person or having adverse consequences on him, should not be passed without affording a hearing to him. The Act also mandates that the assessing officer shall not pass an order of special audit, unless the assessee is heard.

8.Such being the legal position, this Court is of the opinion that the respondent should grant opportunity of hearing to the petitioner before making a reference under Section 142 (2A), whereas the respondent has failed to do so. Hence, the proceedings dated 27.03.2013 issued by the respondent is liable to be set aside and is accordingly set aside. Consequently, the respondent is directed to issue a show cause notice to the petitioner within a period of two weeks from the date of receipt of a copy of this order. On receipt of the same, the petitioner shall file his objections along with the required documents, if any, within a period of two weeks thereafter. On such filing, the respondent shall consider the same and pass appropriate orders, on merits and in accordance with law, after affording an opportunity of personal hearing to the petitioner, within a period of two weeks therefrom.

9.This writ petition stands allowed in the above terms. No costs. Consequently, connected Miscellaneous Petition is closed.

s/d-
Assistant Registrar(CS-III)

True Copy

Sub-Assistant Registrar

To

The Assistant Commissioner of Income Tax
Circle - II Erode 638 001.

+1cc to A.P.Srinivas,Advocate, SR. No. 23346

W.P.No.13305 of 2013

EV(CO)
RMP(13/07/2020)