WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **09.12.2020**

CORAM:

THE HONOURABLE MR.JUSTICE **ABDUL QUDDHOSE**

W.P.(MD)No.3999 of 2020
and
W.M.P.(MD).Nos.3394 & 3395 of 2020

(Through the Video Conferencing)

Nadimuthupathar Sundarapandian Elavarman ... Petitioner

Vs

The Assistant Commissioner of Income Tax,
Circle 2(1), Trichy,
O/o. the Assistant Commissioner of Income Tax,
3rd Floor, Main Building,
Williams Road, Cantonment,
Tiruchirapalli-620 001. ... Respondent

PRAYER: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, to call for the records of the respondent in PAN AAOPE0729L vide order No.ITBA/AST/S/144/2019-20/1022908268(1) dated 23.12.2019 and the consequential demand made in PAN AA0PE0729L vide Order No.ITBA/AST/S/156/2019-20/1022908349(1) dated 23.12.2019 and quash the same as ex-facie, illegal, arbitrary without jurisdiction and against the principles of natural justice.

For Petitioner : Mr.K.Soundararajan

For Respondent : Mr.N.Dilipkumar
Standing counsel

ORDER

This writ petition has been filed challenging the re-assesment made by the respondent under the impugned assessment order dated 23.12.2019 for the assessment year 2017-2018 under Section 144 of the Income Tax Act, 1961.

2. Heard Mr.K.Soundararajan, learned counsel for the petitioner and Mr.N.Dilip Kumar, learned Standing counsel for the respondent.

https://hcservices.ecourts.gov.in/hcservices/

WEB COPY

3. The petitioner has challenged the impugned assessment order on the following grounds:-

(a). The respondent has violated the principles of natural justice by not affording sufficient opportunity to the petitioner while passing the impugned re-assessment order.

(b). No personal hearing was granted to the petitioner as stipulated under Section 144 of the Income Tax Act, 1961.

(c). The respondent has failed to take note of the fact that on receipt of the notice dated 02.03.2017 from the respondent, the petitioner has opted to take the benefit of the Pradhan Mantri Garib Kalyan Yojana Scheme, 2016, on 31.03.2017 itself. Therefore, the impugned re-assessment proceedings for taking the cash deposit as an unexplained money under Section 69A of the Income Tax Act, 1961, is void abnitio, illegal and also arbitrary.

(d). The respondent has not applied its mind to the records available with him before treating the cash deposits as unexplained money.

(e). The respondent has failed to take note of the fact that an amendment to Section 115BBE of the Act, was made by the Taxation Laws (2nd Amendment Act 2016), which came into effect on 01.04.2017 and not in the assessment year 2017-18. Therefore, the respondent do not have the authority to pass the impugned proceedings under Section 144 of the Income Tax Act, 1961, for the assessment year 2017-2018.

(**f**). The increase in the rate of tax, as seen from the impugned assessment order, is not permissible as the amendment came into force only on 01.04.2017.

(g). The respondent has initiated reassessment proceedings under Section 144 of the Income Tax Act, 1961, without authority under law, since the amendment to Section 143 (3A) of the Income Tax Act, 1961, was proposed only in the Budget 2020 to include Section 144 proceedings also. Therefore, for the assessment year 2017-2018, the amendment to Section 143 (3A) of the Act, made in the year 2020 shall not apply.

4. The learned counsel for the petitioner in his submissions reiterated the grounds raised in this Writ Petition.

5. In the counter affidavit filed by the respondent, they have stated as follows:-

(a). The petitioner has admitted the cash deposit of a sum of Rs.82,29,000/- made during the specified period (i.e., 09.11.2016 to 31.12.2016) under the Pradhan Mantri Garib Kalyan Yojana Scheme 2016, dated 31.12.2016 and paid taxes thereof.

https://hcservices.ecourts.gov.in/hcservices/

(b). However, as per the details available with the Department, the total cash deposit made by the petitioner during the period from 01.04.2016 to 31.03.2017, is for a sum of Rs.1,20,34,000/-, for which, no explanation has been offered by the petitioner.

WEB COPY

(c). The details of claims of declaration made under the Pradhan Mantri Garib Kalyan Yojana Scheme, 2016, on 31.03.2017 in Form-I, depositing tax, surcharge, penalty of a sum of Rs.41,06,271/- was not furnished by the petitioner during the assessment proceedings.

(d). Notice under Section 142 (1) of the Income Tax Act, 1961, dated 23.09.2019 was issued to the petitioner. But, despite receipt of the same, the petitioner has failed to respond to the same. It is also the case of the respondent that further show cause notice was issued on 09.12.2019 stating that the entire cash deposit made during the year amounting to Rs.1,20,34,000/- would be added to the total income in the absence of explanation and to file a reply on or before 12.12.2019.

(e). According to the respondent, no reply was sent by the petitioner to the said show cause notice also. It is the case of the respondent that since no explanation was given by the petitioner, they were constrained to pass the impugned assessment order under Section 144 of the Income Tax Act, 1961. According to the respondent, the amendment to Section 115BBE of the Income Tax Act, 1961, has to be applied retrospectively and therefore, the contention of the petitioner that for the assessment year 2017-2018 the same cannot be applied, is not correct.

(f). It is also the contention of the respondent that insertion of Section 143 (3A) under the Income Tax Act, 1961, is for faceless assessment and it does not have any connection with Section 144 Assessment made under e-proceedings which is conducted as per Instruction No.8 of 2017, dated 29.09.2017, issued under Section 119 of the Income Tax Act, 1961.

6. The learned Standing counsel for the respondent in his arguments has reiterated the contents of the counter affidavit filed by the respondent before this Court.

7. Admittedly, as seen from the impugned assessment order passed under Section 144 of the Income Tax Act, 1961, the petitioner has not participated in the said proceedings and the order is in the nature of *ex parte* assessment order. The grounds raised by the petitioner, namely, the cash amount of a sum of Rs.82,29,000/- deposited under the Pradhan Mantri Garib Kalyan Yojana Scheme, 2016, on 31.03.2017 has not been taken into consideration under the impugned assessment order. It is the

https://hcservices.ecourts.gov.in/hcservices/

WEB COPY

contention of the petitioner that since he has has availed the benefit of Pradhan Mantri Garib Kalyan Yojana Scheme, 2016, the cash amount cannot be treated as an unexplained money under Section 69 (A) of the Income Tax Act, 1961. As seen from the impugned assessment order, the contention of the petitioner has not been considered by the respondent in accordance with law.

8. Similarly, the contention of the petitioner that amendment made to Section 115BBE in the year 2020, will not apply to the assessment year 2017-2018, has also not been considered by the respondent in the impugned assessment order. The respondent has also not considered the petitioner's contention in this Writ Petition that the amendment to Section 143 (3A) of the Income Tax Act, 1961, was proposed only in the Budget 2020 to include Section 144 proceedings also under the e-proceedings and therefore, for the assessment year 2017-2018, the same is not attracted.

9. Though in the counter affidavit, the respondent has given reasons for each and every contention of the petitioner in this writ petition, the same is not reflected in the impugned assessment order. Further, as seen from the impugned proceedings, no personal hearing has been afforded to the petitioner. It is also not clear that whether such an opportunity was given by the respondent to the petitioner or not. All these aforementioned factors will clearly indicate that the respondent has violated the principles of natural justice while passing the impugned assessment order by not affording sufficient opportunity to the petitioner to raise all his contentions available to him under law.

10. For the foregoing reasons, the impugned assessment order dated 23.12.2019 is hereby quashed and the matter is remanded back to the respondent for fresh consideration and the respondent shall pass final orders on merits and in accordance with law after giving sufficient opportunity to the petitioner to raise all his contentions and also affording him the right of personal hearing within a period of twelve weeks from the date of receipt of a copy of this order.

11. With the aforesaid direction, the Writ Petition stands disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar ()

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

https://hcservices.ecourts.gov.in/hcservices/

WEB COPY

Tsg

Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the Advocate/litigant concerned.

+1 CC to Mr.N.DILIP KUMAR, Advocate (SR-25001[F] dated 10/12/2020)

+1 CC to Mr.K.SOUNDARARAJAN, Advocate (SR-25071[F] dated 11/12/2020)

W.P.(MD)No.3999 of 2020
09.12.2020

VB (23.12.2020) 5P 3C