



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : **12.03.2020**

CORAM:

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

W.P(MD)No.5225 of 2020

and

W.M.P(MD).No.4568 of 2020

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Dr.S.Gurushankar

... Petitioner

Vs.

1.The Commissioner of Income Tax (Appeals-19, Chennai)  
Office of the Commissioner of Income Tax (Appeal-19)  
304, Investigation Building,  
Mahathma Gandhi Road, Nungambakkam,  
Chennai 600 034.

2.The Deputy Commissioner of Income Tax  
Central Circle-1, Madurai.

3.The Assistant Commissioner of Income Tax,  
Central Circle-1, Madurai -1.

... Respondents

**PRAYER:** Writ Petition is filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus, to call for the records of the third respondent in his assessment order dated 31.12.2019 in No.ITBA/AST/S/143(3)/2019-20/1023534727(1) insofar as the computation made under Clause 18 to 21 of the computation sheet (No.ITBA/AST/S/213/2019-20/1023534824(1) attached to the said assessment order passed by the third respondent for the assessment year 2017-2018.

For Petitioner : Mr.K.Subramaniam  
Senior Counsel for Mr.S.Ramesh  
For Respondents : Mrs.S.Srimathy  
Senior Standing Counsel

### **ORDER**

The petitioner is the Chairman of the Meenakshi Mission Hospital and Research Centre, Madurai. He had stated in the affidavit that the then Finance Minister, Government of India, on 29.02.2008, in the budget speech, had announced that a new sub Section (11C) is proposed to be inserted under Section 80-1B to grant five years' tax holiday to encourage hospitals to be set up anywhere in India, except certain specified urban areas and to be particularly set up in Tier-2 and Tier-3 towns to serve the rural people. It was stated that the window will be open from 01.04.2008 to 31.03.2013 and during that period, the hospital must commence operation.



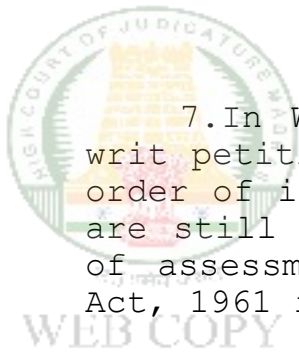
2.The petitioner claims that he had set up a hospital in Nilgiri Therku Thottam Village, Thanjavur Taluk and District, to help the rural people. He purchased land for a total consideration of Rs.1,20,79,000/-, under registered sale deeds. He also obtained a loan for a sum of Rs.7,00,00,000/- at the rate of 11% interest for construction of the hospital from HDFC Limited, Madurai. Overdraft amount of Rs.20,00,000/- at the rate of 9.7% interest was also sanctioned for purchasing the infrastructure required for the said hospital. He also obtained a further loan of Rs.7,21,64,000/- at the rate of 12.5% interest on 11.09.2013 from HDFC Bank, Chennai, for purchase of Elekta Linac, infrastructure fund and OD facility. The hospital was constructed in accordance with the approved building plan. It commenced to function from 05.01.2013 in the name of "Meenakshi Hospital".

3.The petitioner claimed that he filed his original written of income admitting an income of Rs.1,30,98,160/- on 30.09.2014. A search under Section 132 of the Income Tax Act was conducted at the petitioner's residence on 26.11.2014. The return of income filed by the petitioner was processed under Section 143 (1) of the Income Tax Act, 1961 and on 26.10.2015, the case was centralized to the 3<sup>rd</sup> respondent herein. Notice under Section 153A was issued to the petitioner by the 3<sup>rd</sup> respondent. A further notice under Section 143 (2) was issued on 29.07.2016 and notices under Section 142 (1) were issued on 23.08.2016 and 29.09.2016.

4.The 3<sup>rd</sup> respondent passed an assessment order for the assessment year 2013-2014 under Section 143 (3) r/w Section 153A of the Income Tax Act, 1961, disallowing exemption under Section 80-1B (11C) for the assessment year 2013-2014 to 75% and fixing the taxable income at Rs.4,33,09,254/-. For the assessment year 2014-2015, the 3<sup>rd</sup> respondent disallowed exemption under Section 80-1B (11C) to 50% and fixed the taxable income at Rs.7,94,04,287/-. For the assessment year 2015-2016, the 3<sup>rd</sup> respondent disallowed exemption under Section 80-1B(11C) to 25% and fixed the taxable income at Rs.17,42,32,078/-.

5.The petitioner claimed that he filed three appeals under Section 246-A of the Income Tax Act, 1961, against the assessment orders for the assessment years 2013-2014, 2014-2015 and 2015-2016. The Appellate Authority, 1<sup>st</sup> respondent, passed final orders on 14.09.2018 and directed the Assessing Officer to allow 100% deduction under Section 80-1B(11C), as claimed by the petitioner in his return of income filed for the assessment years 2013-2014, 2014-2015 and 2015-2016.

6.The petitioner claimed that the 2<sup>nd</sup> respondent, thereafter, passed a revised order of assessment for the said three assessment years, invoking Section 115-JC of the Income Tax Act. Questioning that, the petitioner filed three writ petitions before this Court in



7.In W.M.P.(MD) Nos.80, 81 and 82 of 2019, in the said three writ petitions, a learned single Judge of this Court had granted an order of interim stay on 04.01.2019. The said three writ petitions are still pending. Subsequently, the 3<sup>rd</sup> respondent passed an order of assessment, without invoking Section 115-JC of the Income Tax Act, 1961 in respect of the assessment year 2016-2017.

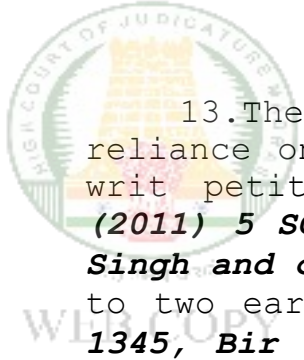
8.The present writ petition has been filed with respect to the order of assessment for the assessment year 2017-2018, since the 3<sup>rd</sup> respondent had invoked Section 115-JC of the Income Tax Act, 1961.

9.Heard arguments advanced by Mr.K.Subramaniam learned Senior Counsel for Mr.S.Ramesh learned counsel for the petitioner and Mrs.S.Srimathy learned Senior Standing Counsel for the respondents.

10.The learned Senior Counsel stated that for the assessment years 2013-2014, 2014-2015 and 2015-2016, the petitioner having grievance over the order of assessment made by the Assessing Officer, namely, the Deputy Commissioner of Income Tax, Chennai Circle-1, Madurai, had filed appeals under Section 246 (A) of the Income Tax Act, 1961, before the Appellate Authority, namely, the Commissioner of Income Tax (Appeals-19, Chennai), Chennai.

11.The learned Senior Counsel stated that the said authority had examined the assessment order and had passed a detailed order allowing the said appeal. The Appellate Authority had also stated that the Assessing Officer was not justified in restricting the assessee's claim of deduction under Section 80-1B(11C) of the Income Tax Act to the extent of 75%, 50% and 25% with respect to the assessment years 2013-2014, 2014-2015 and 2015-2016 respectively. The Appellate Authority had directed that the Assessing Officer should give 100% deduction, on the basis of the announcement by the Finance Minister that five years' tax holidays would be given to such of those Hospitals, which are established in backward areas.

12.It is claimed that the Hospital in the instant case was established at Nilgiri Therku Thottam Village in Thanjavur Taluk, which is claimed to be a backward place. The matter was, thereafter, remanded back to the Assessing Officer for the said three assessment years. The Assessing Officer, while reworking the commutation, had invoked the provisions of Section 115JC of the Income Tax Act. Invoking Section 115JC of the Act had once again been a cause of grievance for the petitioner and after the assessment orders were passed, the same were challenged before this Court in W.P(MD).Nos.107, 108 and 109 of 2019 (***S.Gurushankar Vs., The Commissioner of Income Tax (Appeals-19, Chennai and two others)***). It must be mentioned that only an interim order of stay has been granted in the said writ petitions and the writ petitions are still pending.

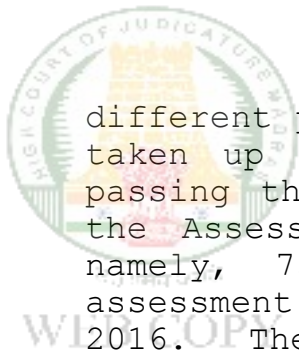


13.The learned Senior Counsel for the petitioner placed reliance on the interim order dated 04.01.2019 granted in the said writ petitions. In this connection, reference had been made to **(2011) 5 SCC 305, State of Uttar pradesh and others Vs. Hirendrapal Singh and others**, wherein, the Honourable Supreme Court had referred to two earlier judgments in paragraphs 16 and 17 viz., **AIR1987 SC 1345, Bir Bajrang Kumar Vs., State of Bihar** and **1995 supp (1) SCC 461, Vishnu Trader Vs., State of Haryana** and stated that, when cases involving identical points come up for consideration, the Courts should give identical treatment. Otherwise, it would create an anomalous position, since there would be a possibility of contradictory orders being passed in similar type of cases. The Hon'ble Supreme Court in the case of **Vishnu Traders vs. State of Haryana**, (referred supra) had stated that all similar matters should receive similar treatment except where factual differences require different treatment. It is seen that the discretion vested with the Court to examine each case on its facts and to decide accordingly has not been taken away or eroded by said pronouncement.

14.The learned Senior Counsel also placed reliance on paragraph Nos.11 and 12 of the judgment of a Division Bench of the Madhya Pradesh High Court reported in **(2005) 1 MP LJ 400, S.M.P.Sharma vs., State of M.P and another**. It is seen in paragraph No.11 that the Division Bench had actually stated that an order admitting a writ petition for hearing or granting an interim order on the facts and circumstances of the case, is not a final decision. It has also been stated that it does not lay down any principle of law which is binding. In paragraph No.12, reference has been made to **AIR 1987 SC 1345 (Bir Bajrang Kumar Vs., State of Bihar)**, (referred supra). The Hon'ble Supreme Court had reiterated the necessity of giving identical treatment, in cases involving identical points by the Courts and also stated that if the cases are before two different seats of the same High Court and it is not practical to hear both the cases together then if one of the cases is decided, then, that decision would act as the precedent to other case.

15.In the instant case, the earlier writ petitions have not been decided finally. Only interim order had been granted. The learned Senior Counsel stated that while granting interim order, the learned single Judge of this Court had examined the issue of violation of principles of natural justice and also violation of promissory estoppel held over by the Finance Minister in his budget speech in the Parliament, pursuant to which, Section 80-1B(11C) of the Income Tax Act was inserted and therefore, stated that the said interim order has to be followed by this Court.

16.I do not agree. The facts in the present writ petition are totally different from the facts canvassed while challenging the assessment orders for the assessment years 2013-2014, 2014-2015 and 2015-2016. The assessment orders in those years travelled a



different path. After the assessment orders were passed, they were taken up in appeal before the Appellate Authority. Even while passing the assessment order, instead of granting 100% deduction, the Assessing Officer had granted different rates of deduction, namely, 75% for the assessment year 2013-2014, 50% for the assessment year 2014-2015 and 25 % for the assessment year 2015-2016. The Appellate Authority held that such restriction of the percentage for deduction was unreasonable and was not called for and that 100% deduction should have been given and on that single ground, had remanded the matter back to the Assessing Officer.

17.The Assessing Officer had then taken up an entirely different stand. He invoked the provision under Section 115 JC of Income Tax Act. Therefore, the assessment orders were then challenged before this Court by stating that when Section 115 JC was not at all invoked in the first instance in the orders in the original, the order of the Assessment Officer invoking the same after the matters had been remanded, was not proper and not justified. The other grounds raised were with respect to the issues of promissory estoppel and with respect to violation of principles of natural justice.

18.A reading of interim order passed by this Court as aforesaid, shows that the learned Judge in paragraph No.4 had recorded as follows:-

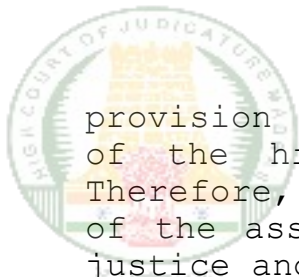
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4.Yet another contention that is raised is that the petitioner was granted tax holiday for five years and acting on the said representation, the petitioner had altered his position. He would assail the correctness of the impugned order on the ground of promissory estoppel also.

.....'

19.The learned Judge had not interfered with the assessment orders on the ground of promissory estoppel. He merely referred to the issues raised.

20.The ground of violation of principles of natural justice seems to have been examined by the learned Judge. The learned Judge had relied on a decision reported in **1995 (6) SCC 396, Modi Industries Limited and others Vs., Commissioner of Income Tax, Delhi and another**, wherein, a principle was laid down that if an appeal had been preferred against the order of assessment passed by the Income Tax Officer under Sections 143 and 144 and the order had been modified pursuant to the assessment order, that will clearly not be an order under Sections 143 and 144 simpliciter. A regular assessment is completed as soon as the Income Tax Officer passes an order assessing the total income or loss of the assessee and determining the sum payable by him or refundable to him within the period prescribed by sub-Section (1) of Section 153. There is no



provision for making modification or variation pursuant to an order of the higher authority in Sections 143 or 144 of the Act. Therefore, the learned Judge observed that invoking Section 115 JC of the assessment order it had violated the principles of natural justice and granted stay.

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21. In the instant case, the assessment order has been straight away challenged before this Court. The writ petitioner had not filed any appeal, even though the law provides him opportunity to do so. He had chosen the alternate method of coming before this Court. It is, however, pointed out by the learned Senior Counsel that a rectification application was filed as against the assessment order and the same has also been

rejected by the Assessing Authority. It has been stated by the learned Senior Counsel that the rejection order was passed before the writ petition was filed. However, for reasons best known to the writ petitioner and to the learned counsel for the writ petitioner, the said fact has been suppressed before this Court.

22. The learned Senior Counsel also stated that invoking Section 115 JC of the Act without giving proper notice to the petitioner herein is a clear violation of principal of natural justice. In this connection, reliance has been placed on ***AIR 1977 SC 1627, State of Kerala vs K.T. Shaduli***. The learned Senior Counsel placed specific reference to paragraph 2, where it had been stated that the law is well settled that the tax authorities are entrusted with the power to make assessment of tax and to discharge quasi-judicial functions and they are bound to observe principles of natural justice in reaching their conclusions. The learned Senior Counsel therefore stated that when the Assessing Officer had invoked the provision under Section 115 JC of the Act, he should have put the petitioner on prior notice that he is going to invoke Section 115 JC of the Income Tax Act, particularly, since the earlier writ petitions are pending.

23. The said argument is rejected by me, because those writ petitions were filed challenging the assessment order passed on remand and invoking Section 115-JC was contrary to the terms of the remand. In the present case, Section 115 JC of the Act has been invoked in the first instance itself. Section 115 JC of the Act comes under chapter XII-BA of the Income Tax Act. It relates to special provisions. The very Section starts with the word "*notwithstanding anything contained in the Act*". It also states that "*where a regular income tax payable for the previous year by the person, other than a company, is less than the alternate minimum tax payable for such previous year, the adjusted total income shall be deemed to be the total income of that person for such previous year and he shall be liable to pay income tax of such total income at the rate of eighteen and one half percent*". This provision can



always be invoked when there are materials to hold that the assessee has indulged in what can be loosely termed as fraudulent transactions.

24. In the assessment order, the Assessing Officer had examined the returns of the petitioner herein. The returns of income for the year 2017-2018 was filed on 28.09.2017. When it was taken up for scrutiny, notice under Section 143 (2) was issued and was also served. There was a search of the place of the assessee also. After the search, it was found that one M/s.Sowdambika Traders ADV having office at 47, Trichy Bye Pass Road, Sukkaliyur Post, Karur were said to have supplied medical equipments/instruments to Meenakshi Hospital, Thanjavur, for a sum of Rs.2,32,79,760/-. This was debited in the accounts of the hospital in the name of Sowdambika Traders. It was found that the payment for the purchase of the said medical equipments was paid by demand draft. It was however noted that though payment had been made for a huge sum of Rs.2,32,00,000/-, the details of the medical equipments were not disclosed by the assessee. Statements were recorded from the Officials in the Financial Department. It was also found after enquiry that M/s.Sowdambika Traders, whose address was given as No.47, Trichy Bye Pass Road, Sukkaliyur Post, Karur, had disclosed a bank account in Canara bank, Karur. But no such customer was found by Assessing Officer. It was found that the account was maintained by one S.Sivasamy of Karur. Further attempts were made to identify the existence of M/s.Sowdambika Traders and the name of another individual came up, called C.P.Anbunathan. He was examined and he stated that he did not know anything about the transaction and he did not know how the said amount was reflected in the bank account in his name as Proprietor of M/s.Sowdambika Traders. He disowned all knowledge about the transaction.

25. It has to be pointed out that any tax holiday can be granted to a person who declares a truthful return. It cannot and should not be granted to the person who claims that he purchased medical equipments in the guise of treating poor persons for a sum of Rs.2,32,79,760/- and it is subsequently found that the entire transaction is bogus.

26. I find every justification in the order of the Assessment Officer invoking Section 115JC which provision is squarely applicable.

27. It is also seen that C.P.Anbunathan had further stated in his statement that the demand draft drawn in the name of M/s.Sowdambika

Traders was received by Meenakshi Mission Hospital and Research Center, Madurai and in turn cash was handed over by him to the petitioner Dr.S.Gurushankar after deducting commission of one



guise of serving the poor and needy and seeking tax holiday, this court can never come to the rescue of the petitioner.

28.The account books of Meenakshi Hospital, Thanjavur were also verified and it was seen that the demand draft was never reflected in the accounts and only cash payment has been made for a sum of Rs.2,32,79,760/-.

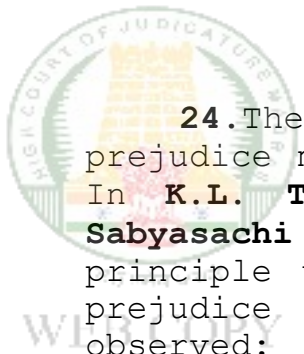
29.I am examining the assessment order in detail, in view of the fact that it has been insisted by the learned Senior Counsel that there has been violation of the principles of natural justice. It must be kept in mind that the Honourable Supreme Court has also expanded the principles of natural justice.

30.In **(2000) 7 SCC 529, Aligarh Muslim University and Others Vs. Mansoor Ali Khan**, the Hon'ble Supreme Court had an occasion to consider the effect of a "useless formality" - a theory, which is an exemption to the principles of natural justice.

"21.As pointed recently in **M.C. Mehta Vs. Union of India (1999 (6) SCC 237)**, there can be certain situations in which an order passed in violation of natural justice need not be set aside under Article 226 of the Constitution of India. For example where no prejudice is caused to the person concerned, interference under Article 226 is not necessary. Similarly, if the quashing of the order which is in breach of natural justice is likely to result in revival of another order which is in itself illegal as in **Gadde Venkateswara Rao vs. Government of Andhra Pradesh [1966 (2) SCR 172 = AIR 1966 SC 828]**, it is not necessary to quash the order merely because of violation of principles of natural justice.

22.In **M.C.Mehta {1999} 6 SCC 237** it was pointed out that at one time, it was held in **Ridge vs. Baldwin (1964 AC 40)** that breach of principles of natural justice was in itself treated as prejudice and that no other 'defacto' prejudice needed to be proved. But, since then the rigour of the rule has been relaxed not only in England but also in our country. In **S.L. Kapoor Vs. Jagmohan (1980 (4) SCC 379)**, **Chinnappa Reddy, J. followed Ridge vs. Baldwin** and set aside the order of supercession of the New Delhi Metropolitan Committee rejecting the argument that there was no prejudice though notice was not given. The proceedings were quashed on the ground of violation of principles of natural justice. But even in that case certain exceptions were laid down to which we shall presently refer.

23.**Chinnappa Reddy, J. in S.L.Kapoor's case [(1980) 4 SCC 379]**, laid two exceptions (at p.395) namely, "if upon admitted or indisputable facts only one conclusion was possible", then in such a case, the principle that breach of natural justice was in itself prejudice, would not apply. In other words if no other conclusion was possible on admitted or indisputable facts, it is not necessary to quash the order which was passed in violation of natural justice. Of course, this being an exception, great care must be taken in applying this exception.



**24.**The principle that in addition to breach of natural justice, prejudice must also be proved has been developed in several cases. In **K.L. Tripathi Vs. State Bank of India ( 1984(1) SCC 43)**, **Sabyasachi Mukherji, J.** ( as he then was) also laid down the principle that not mere violation of natural justice but de facto prejudice (other than non-issue of notice) had to be proved. It was observed: quoting Wade Administrative Law, (5th Ed.PP.472-475) as follows: ( para 31)

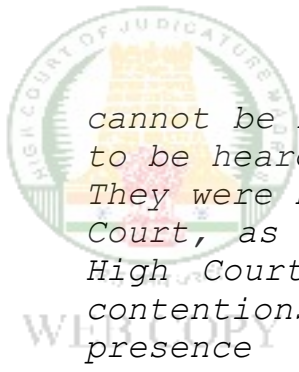
"....it is not possible to lay down rigid rules as to when principles of natural justice are to apply, nor as their scope and extent ....There must have been some real prejudice to the complainant; there is no such thing as a merely technical infringement of natural justice. The requirements of natural justice must depend on the facts and circumstances of the case, the nature of the inquiry, the rules under which the tribunal is acting, the subject matter to be dealt with and so forth".

Since then, this Court has consistently applied the principle of prejudice in several cases. The above ruling and various other rulings taking the same view have been exhaustively referred to in **State Bank of Patiala Vs. S.K. Sharma ( 1996(3) SCC 364)**. In that case, the principle of 'prejudice' has been further elaborated. The same principle has been reiterated again in **Rajendra Singh Vs. State of M.P. ( 1996(5) SCC 460)**.

**25.**The 'useless formality' theory, it must be noted, is an exception. Apart from the class of cases of "admitted or indisputable facts leading only to one conclusion" referred to above,- there has been considerable debate of the application of that theory in other cases. The divergent views expressed in regard to this theory have been elaborately considered by this Court in **M.C. Mehta** referred to above. This Court surveyed the views expressed in various judgments in **England by Lord Reid, Lord Wilberforce, Lord Woolf, Lord Bingham, Megarry, J. and Straughton L.J.** etc. in various cases and also views expressed by leading writers like Profs. Garner, Craig, De. Smith, Wade, D.H. Clark etc. Some of them have said that orders passed in violation must always be quashed for otherwise the Court will be prejudging the issue. Some others have said, that there is no such absolute rule and prejudice must be shown. Yet, some others have applied via-media rules. We do not think it necessary, in this case to go deeper into these issues. In the ultimate analysis, it may depend on the facts of a particular case."

**31.**The same position had been reiterated in **2006 (8) SCC 647 [Punjab National Bank and Others]:**

*"In an industrial dispute referred to by the Central Government which has an all-India implication, individual workman*



cannot be made parties to a reference. All of them are not expected to be heard. The Unions representing them were impleaded as parties. They were heard. Not only the said Unions were heard before the High Court, as noticed hereinbefore from a part of the judgment of the High Court, they had preferred appeals before this Court, Their contentions had been noticed by this Court. As the award was made in presence of the Unions, in our opinion, the contention of Respondents that the award was not binding on them cannot be accepted. The principles of natural justice were also not required to be complied with as the same would have been an empty formality. The court will not insist on compliance of the principles of natural justice in view of the binding nature of the award. Their application would be limited to a situation where the factual position or legal implication arising thereunder is disputed and not where it is not in dispute or cannot be disputed. If only one conclusion is possible, a writ would not issue only because there was a violation of the principles of natural justice."

32.A Division Bench of this Court in a Judgement reported in **2006 4 LLN 358 [Dr.C.Chendroyaperumal Vs. National Institute of Port Management]** had also expressed their views on this aspect.

"9. Coming to the legal aspects canvassed by the learned counsel for the appellant, it is seen that they revolve around violation of the principles of natural justice. Even at the outset, we are not impressed with the said argument, since in our opinion, "Principles of natural justice is for thoroughbred horses and not wild horses." Wild horses understand only the language of the whip and hence there is no use trying to tame them with persuasion. The principles of natural justice themselves have traversed a long way from the stage at which they were treated as a "tharaka manthra" or panacea for all diseases, to the present stage where the Courts have started looking at the credentials of the person using them as a shield or sword and accepting the fact that they are not indispensable."

33.I hold that the petitioner cannot complain about violation of any principle relating to natural justice. An assessment order has been passed. An appellate remedy is available. The petitioner has consciously decided to forego that remedy.

34.If the assessment order is examined further, it also reveals that during the demonetisation period, the petitioner had deposited a total sum of Rs.7,54,77,619/- in cash, and when the assessee was asked to explain the source, he stated that he was running Meenakshi Mission Hospital at Thanjavur, for which, the tax holiday is now being sought. The hospital has been the source for a huge cash holding of Rs.7,54,77,619/-. It is a wonder that the petitioner actually seeks tax holiday.



35. In view of all these facts, I hold that this Writ Petition has to suffer an order of dismissal. It is accordingly dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

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Sd/-

Assistant Registrar (AS)

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Sub Assistant Registrar(CS)

To

1. The Commissioner of Income Tax (Appeals-19, Chennai)  
Office of the Commissioner of Income Tax (Appeal-19)  
304, Investigation Building,  
Mahathma Gandhi Road, Nungambakkam,  
Chennai 600 034.

2. The Deputy Commissioner of Income Tax  
Central Circle-1, Madurai.

3. The Assistant Commissioner of Income Tax,  
Central Circle-1, Madurai -1.

+1 CC to M/s.S.RAMESH, Advocate ( SR-11409[F] dated 12/03/2020 )

+1 CC to M/s.S.SRIMATHY, Advocate ( SR-11638[F] dated 13/03/2020 )

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