IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 26.08.2021

CORAM

THE HONOURABLE MR.JUSTICE M.SUNDAR

W.P.No.17686 of 2021 &
W.M.P.Nos.18849, 18852 and 18853 of 2021

Munuswamy Mani ... Petitioner

Vs.

1. The Assistant Commissioner of Income Tax
   National e-Assessment Centre, Delhi
   Room No.401, 2nd Floor
   E-Ramp, Jawaharlal Nehru Stadium
   Delhi - 110 003

2. The Deputy Commissioner of Income Tax
   Non Corporate Circle - 8(1), Chennai
   Income Tax Department
   121, Nungambakkam High Road
   Nungambakkam
   Chennai - 600 034

3. The Principal Commissioner of Income Tax
   Chennai- 4
   Income Tax Department
   121, Nungambakkam High Road
   Nungambakkam
   Chennai - 600 034 ... Respondents

Writ petition filed under Article 226 of the Constitution of India for issuance of writ of certiorarified mandamus calling for the records of the writ petitioner company on the file of the First Respondent to quash the impugned order dated 19.04.2021 passed u/s 143(3) r/w.Sec. 144B of the Act for the Assessment Year 2018-19 in ITBA/AST/S/143(3)/2021-22/1032517217(1) and consequently direct the first respondent to complete the fresh assessment for the assessment year 2018-19 after granting reasonable / sufficient opportunity of hearing.

For Petitioner : Mr.S.Sridhar

For Respondents : Ms.Hema Muralikrishnan
Senior Standing Counsel

ORDER

Captioned writ petition and 'Writ Miscellaneous Petitions' ('WMPs' in plural and 'WMP' in singular for the sake of brevity) are listed in the admission Board i.e., in the Motion List under the cause list caption 'FOR ADMISSION. Mr.S.Sridhar, learned counsel on record for sole writ petitioner is before this Virtual Court.

2. Learned counsel for writ petitioner, notwithstanding very many averments and grounds in the writ affidavit focussed his submission on one point and that one point is, 'Assessment Order dated 19.04.2021 bearing reference ITBA/AST/S/143(3)/ 2021-22/1032517217(1)' (hereinafter 'impugned order' for the sake of brevity, convenience and clarity) for the Assessment Year 2018-19 qua the writ petitioner has been made under Section 143(3) read with Section 144B of the Income Tax Act, 1961 ('IT Act' for the sake of clarity) [to be noted, the impugned order itself says that it has been made under Section 143 (3) read with Section 144B of IT Act], the draft Assessment Order (preceding the impugned order) has been digitally signed on 16.04.2021 at 16 hours, but seeks a response by 59 minutes past 23 hours the same day, resulting in NJP infraction. Scanned reproduction of the last two pages of Assessment order is as follows:

assessee u/s 68 of the I. T. Act. for taxation u/s 115BBE of the IT. Act.

Subject to the above discussion and decision, total income of the assessee is computed as under:

Total Income declared by the assessee in ITR	Rs.	17,09,020/-
Add: Unexplained cash receipt added u/s 68	Rs.	23,86,16,306/-
Total Income	Rs.	24,03,25,326/-
Total Income r/o	Rs.	24,03,25,330/-

Assessed u/s 143(3) of the Income Tax Act at total income of Rs. 24,03,25,326/-. The payable/refundable is determined as per the computation sheet enclosed. Charge interest u/s 234A, 234B, 234C & 234D as per I.T. Act, 1961. Necessary forms are being issued.

Penalty proceeding u/s 271AAC also initiated separately.

Penalty proceedings u/s 270A of the I. T. Act , 1961 for under-reporting of income are initiated separately .

You are hereby given an opportunity to show cause why the assessment should not be completed as per the draft assessment order.

3. Kindly submit your response through your registered e-filing account at www.incometaxindiaefiling.gov.in by 23:59 hours of 18/04/2021, whereby you may either:-

a. accept the proposed modification; or
b. file your written reply objecting to the proposed modification; or
c. if required,you may request for personal hearing so as to make oral submissions or present your case after filing of written reply. On approval of the request, personal hearing shall be conducted exclusively through video conference;

4. In case no response is received by the given time and date, the assessment shall be finalized as per the draft assessment order.

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Yours faithfully,
Additional / Joint / Deputy / Assistant Commissioner of Income-Tax/
Income-tax Officer,
National e-Assessment Centre,
Delhi

Signature Not Verified
[illegible]
[illegible]
[illegible]

3. Learned counsel, adverting to aforesaid last two pages submits that the draft Assessment Order says that the writ petitioner / Assessee should submit his response through registered e-filing account by 23.59 hours on the same day i.e., 16.04.2021. This means less than 8 hours has been given to the Assessee to submit his response even if the time of signing the draft Assessment Order is taken as the reckoning time. However, the uploading was little later is learned counsel's say. This means that less than 8 hours has been given for the writ petitioner to respond and even before the writ petitioner could react, the impugned order came to be made on 19.04.2021, is his further say.

4. Learned counsel adverting to Section 144B(1)(xvi)(b) read with 144B (7)(vii) submits that an opportunity to show-cause should be given to the Assessee and when such opportunity is provided by serving a notice upon the Assessee, Assessee has the option of requesting for a personal hearing.

5. Section 144B(1)(xvi)(b) and 144B (7)(vii) of IT Act read as follows:

'Section 144B(1)(xvi)(b)

> *(b) provide an opportunity to the assessee, in case any variation prejudicial to the interest of assessee is proposed, by serving a notice calling upon him to show cause as to why the proposal variation should not be made; or'*

' Section 144B(7)(vii):

> *(vii) in a case where a variation is proposed in the draft assessment order or final draft assessment order or revised draft assessment order and an opportunity is provided to the assessee by serving a notice calling upon him to show cause as to why the assessment should not be completed as per the such draft or final order or revised draft assessment order, the assessee or his authorised representatives, as the case may be, may request for personal hearing so as to make his oral submissions or present his case before the income tax authority in any unit.'*

6. Ms.Hema Muralikrishnan, learned Senior Standing Counsel for respondents, who was before this Virtual Court, accepted notice on behalf of all the three respondents.

7. Learned Revenue counsel submitted that Section 144B kicked in only on 01.04.2021 and the question as to whether in cases of this nature, the exercise should be undertaken under 144B (faceless assessment) or under the erstwhile Section 143(3A) may please be left open. This request is acceded to and the same is left open as this issue need not be tested for deciding the case on hand as it turns entirely on violation of 'Natural Justice Principle' ('NJP' for the sake of brevity), which admittedly applies to Section 143 (3) also.

8. I now embark upon the exercise of discussion and giving my dispositive reasoning.

9. A careful perusal of the aforementioned provisions of IT Act i.e., Section 144B(1)(xvi)(b) read with Section 144B (7)(vii) makes it clear that it is ingrained in the statute that whenever a variation is proposed qua draft Assessment Order, a show-cause /opportunity should be given to Assessee and when the Assessee is given such an opportunity, the Assessee has the option of requesting for a personal hearing. In the case on hand, the draft Assessment Order itself has been digitally signed only at 04.00pm on 16.04.2021, calling upon the Assessee to submit his objections, if any, by 23.59 hours on the same day. This is clearly a violation of NJP. At this juncture, learned Revenue counsel submitted that it has been signed on 15.04.2021, the previous day.

10. A scanned reproduction supra will demonstrate that it is not clear as to whether it is 15.04.2021 or 16.04.2021 as an interrogatory mark is superimposed qua the digital signature. On a demurrer, even if it is assumed that it was signed on 15.04.2021, it is obvious that the time is too short and it is a clear violation of NJP as requirement is one that is ingrained in the very provisions under which the impugned Assessment Order has been made.

11. At the risk of repetition, it is reiterated that as already alluded to, the question as to whether the exercise should have been undertaken under erstwhile Section 143(3A) or under the provisions now we are concerned with is left open. In this regard, learned revenue counsel in all fairness submitted that even if it is under the erstwhile Section 143(3A), a show-cause notice and an

opportunity of being heard is statutorily imperative. Therefore, this puts an end to even a possible controversy with regard to the provision of law and draws the curtains qua the captioned writ petition.

12. In the light of the narrative, discussion and dispositive reasoning thus far, the following order is passed:

a) Impugned Assessment Order being order dated 19.04.2021 bearing reference ITBA/AST/S/143(3)/2021-22/1032517217(1) made by first respondent is set aside.

b) Impugned Assessment Order is set aside solely on the ground of infarction of 'Natural Justice Principle' ('NJP' for the sake of brevity).

c) It follows as a sequitur that no opinion or view has been expressed on the merits of the matter in this order. The first respondent shall recommence the exercise and complete the same in accordance with law by adhering the NJP requirements as expeditiously as possible as his business would permit and in any event within eight weeks from today i.e., on or before 21.10.2021.

Captioned writ petition is disposed of with above directives. Consequently, captioned WMPs are also disposed of as closed. There shall no order as to costs.

Sd/-
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

gpa

To

1. The Assistant Commissioner of Income Tax
National e-Assessment Centre, Delhi
Room No.401, 2^{nd} Floor
E-Ramp, Jawaharlal Nehru Stadium
Delhi – 110 003

2. The Deputy Commissioner of Income Tax
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+1cc to Ms.Hema Muralikrishnan, Advocate SR.No. 43248

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(CO)
A.SK(20.09.2021)