IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.10.2021

CORAM

THE HON'BLE MR.JUSTICE M.SUNDAR

W.P.Nos.23474, 23477 & 23480 of 2021
and
WMP.Nos.24716, 24718 & 24720 of 2021

Praveen Kumar Pathi
PAN No: ANUPP7272L
Flat No.G-1, Plot No.321 & 322,
Sri Sai Krupa Nilayam,
Sardar Patel Nagar,
Kukatpally, Hyderabad-500 072
Andhra Pradesh.

...Petitioner in all Wps.

-Vs.-

1. The Assistant Commissioner-Income tax
   DC/AC Central Circle 1(2),
   Investigation Building,
   No.46 (Old No.108),
   Mahatma Gandhi Road,
   Chennai, Tamil Nadu-600 034.

2. The Principal Commissioner of Income Tax-1,
   IT Tower, AC Guards,
   Masab Tank, Hyderabad,
   Andhra Pradesh, 500 004.

3. The Income Tax Officer-(Hqrs)-II
   Office of the Principal Commissioner of Income Tax-1,
   IT Tower, AC Guards,
   Masab Tank, Hyderabad,
   Andhra Pradesh, 500 004.

...Respondents in all Wps

Writ Petitions filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, to call for the records of the impugned Assessment Orders dated 29.09.2021 passed by the first respondent in (i) ITBA/AST/S/153C/2021-22/1036030956(1) (ii)ITBA/AST/S/153C/2021-22/1036031052(1) and (iii)ITBA/AST/S/153C/2021-22/1036047111(1) for the A.Y. 2017-18, 2018-19 and 2019-20 respectively from the files of the first respondent herein and quash the same.

For Petitioner in all WPs : Ms.Aparna Nandakumar

For Respondents in all WPs : Mr.A.P.Srinivas, Senior Standing counsel

COMMON ORDER

Captioned main writ petitions have been filed assailing three separate Assessment Orders, all dated 29.09.2021 pertaining to three different assessment years namely 2017-18, 2018-19 and 2019-20 qua writ petitioner. To be noted, all the three assessment orders have been made under Section 153C of 'the Income-tax Act, 1961' [hereinafter 'IT Act' for the sake of brevity]. These three assessment orders shall hereinafter be referred to as 'impugned orders' collectively.

2.Ms.Aparna Nandakumar, learned counsel for writ petitioner in all the captioned writ petitions, notwithstanding very many averments in the writ affidavit and several grounds that have been raised in the writ affidavit, in the hearing, in her campaign against the impugned orders, projects two main points and they are as follows:

a) Jurisdiction of first respondent i.e.,territoriality has been questioned by way of writ petitions in Hon'ble Telangana High Court and the same are pending;

b) There is a clear 'Natural Justice Principle' ('NJP') violation as the notice under Section 153C calling upon the writ petitioner to submit returns in accordance with Section 140 of IT Act within one day, but the very next day i.e., 26.09.2021 notice under Section 142

(1) of IT Act has been issued calling upon the writ petitioner to respond by 11.00 a.m on 28.09.2021 writ petitioner, notwithstanding the short time responded by way of a trail mail, but impugned orders have been made by saying that the writ petitioner has not responded to the Section 142(1) notice.

3. Mr.A.P.Srinivas, learned Senior Standing counsel accepted notice on behalf of respondents.

4. Owing to the short and narrow compass or in other words the acute legal angle on which captioned writ petitions turn, main writ petitions are taken up with the consent of learned counsel on both sides.

5. Learned Revenue counsel in response to the submissions made by counsel for writ petitioner, on instructions, responded in the following manner:

a) Proceedings in Hon'ble Telangana High Court are independent separate proceedings and they cannot impact the writ petitioner's challenge to the impugned orders in this Court;

b) Notices under Sections 153C and 142 (1) have been issued in accordance with law and this is a case of search under Section 132 and therefore it is well open to writ petitioner to file a statutory appeal to the statutory Appellate Authority under Section 246A of IT Act.

6. By way of rejoinder, besides reiterating the submissions made in the opening submissions, learned counsel for writ petitioner emphasised that the impugned orders have given a complete go-by to the writ petitioner's response, have been made on the basis that the writ petitioner has not responded and this is another facet of NJP violation, when an assessee has responded, if an order is made on the basis that the assessee has not responded that would also be one facet of NJP violation.

7. This Court now embarks upon the exercise of discussion, setting out its dispositive reasoning and arriving at a conclusion.

8. The first point pertains to challenge to jurisdiction of the first respondent qua territoriality and the same is under challenge before another Hon'ble High Court. In the time honoured comity of Courts principle, this Court deems it appropriate to not to say anything about the writ petitioner's challenge in another Hon'ble High Court. This Court has no difficulty in accepting the submissions of learned Revenue counsel that the challenge qua jurisdiction [territoriality] i.e., in effect is a challenge to transfer and transfer of assessment proceedings from one circle to another and therefore, the same does not impact writ petitioner's challenge to the impugned orders. This puts an end to the first point.

9. This takes us to the second point i.e., NJP violation and alternate remedy rule. This Court has repeatedly held that alternate remedy rule is not an absolute rule or in other words, it is a rule of discretion. It is a self-imposed restraint qua writ jurisdiction. This Court has also repeatedly held that when it comes to fiscal statutes, the alternate remedy rule should be applied with utmost rigour. However, what is of significance is, a three member Bench of Hon'ble Supreme Court

very recently i.e., 03.09.2021 speaking through Hon'ble Justice Dr.Dhananjaya Y Chandrachud in Commercial Steel Limited case [Civil Appeal No 5121 of 2021, The Assistant Commissioner of State Tax and Others Vs. M/s Commercial Steel Limited], made an adumbration of exceptions to the alternate remedy rule and held that when these exceptions are attracted, it can become an exceptional circumstance and a writ Court at its discretion can interfere depending on the facts and circumstances of the case. Relevant paragraphs in Commercial Steel case are paragraphs 11 and 12, which read as follows:

> '11 The respondent had a statutory remedy under section 107. Instead of availing of the remedy, the respondent instituted a petition under Article 226. The existence of an alternate remedy is not an absolute bar to the maintainability of a writ petition under Article 226 of the Constitution. But a writ petition can be entertained in exceptional circumstances where there is: (i) a breach of fundamental rights; (ii) a violation of the principles of natural justice; (iii) an excess of jurisdiction; or (iv) a challenge to the vires of the statute or delegated legislation.
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> 12 In the present case, none of the above exceptions was established. There was, in fact, no violation of the principles of natural justice since a notice was served on the person in charge of the conveyance. In this backdrop, it was CA 5121/2021 7 not appropriate for the High Court to entertain a writ petition. The assessment of facts would have to be carried out by the appellate authority. As a matter of fact, the High Court has while doing this exercise proceeded on the basis of surmises. However, since we are inclined to relegate the respondent to the pursuit of the alternate statutory remedy under Section 107, this Court makes no observation on the merits of the case of the respondent.'

10. A careful perusal of the aforementioned portion of Commercial Steel case law makes it clear that NJP violation is a certain exception to the alternate remedy rule. To be noted, in the case on hand, writ petitioner counsel's argument is posited and pivoted on NJP violation heavily. In fact that is the sheet anchor submission of learned counsel for writ petitioner.

11. The chronology i.e., notice under Section 153C of IT Act one day time to send in the return in accordance with Section 140 of IT Act and on the heels of this notice or in other words,

biting on the heels on this notice issued under 142(1) notice the very next day i.e., 26.09.2021, giving barely two full days time and calling upon the writ petitioner to respond and making the impugned order by saying the writ petitioner has not responded, when the writ petitioner has actually responded by way of a trail mail is a certain NJP violation cumulatively making it one of the aforementioned exceptional circumstances. This is more so as Section 142(1) and response to the same is so integral a part of assessment that it cannot be given a go-by. If it cannot be given a go-by, if this mechanism is statutorily imperative, violation of the same certainly qualifies as NJP.

12. What is of greater significance is though writ petitioner has responded (notwithstanding the short time given for responding) the impugned order proceeds with the assessment saying writ petitioner has not responded.

13. This Court having come to the conclusion that there is NJP violation deems it appropriate to examine the matter further in the light of the argument of learned Revenue counsel that writ petitioner should be relegated to a statutory appeal under Section 246A. Let me test this argument on a demurrer. Assuming the writ petitioner is relegated to alternate remedy and if the writ petitioner files statutory appeal under Section 246A, aforementioned argument regarding reply being sent and the same not being considered by the Assessing Officer and impugned orders being made on the basis that writ petitioner has not responded could be advanced as a grounds of appeal before the statutory Appellate Authority also. If that is done, statutory Appellate Authority will have no option other than sending the matter back to the Assessing Officer to consider the response already sent by writ petitioner. This means further delay for the Revenue and uncertainty for the assessee. This would serve nobody's cause. Therefore, on the facts and circumstances of this case, considering that this proceedings is based on a pen drive allegedly recovered in search proceedings under Section 132 of IT Act from the premises of a third party, it is imperative that the response of the writ petitioner is considered before assessment orders are made. In other words, this Court is interfering in writ jurisdiction, owing to the peculiar facts and circumstances of this case which puts it in one of the exceptional circumstances basket culled out in Commercial Steel principle alluded to supra.

14. Captioned writ petitions are disposed of by making the following order:

a) Three impugned assessment orders being assessment orders bearing reference Nos.(i) ITBA/AST/S/153C/2021-22/1036030956(1) (ii) ITBA/AST/S/153C/2021-22/1036031052(1) and (iii)

ITBA/AST/S/153C/2021-22/1036047111(1) all dated 29.09.2021 are set aside solely on the ground that the writ petitioner's response to Section 142(1) has not been considered;

b) As a corollary to the previous limb, though obvious, it is made clear that this Court has not expressed any view or opinion on the merits of the matter;

c) First respondent shall now redo the proceedings from the Section 142(1) (of IT Act) notice stage i.e., notice under Section 142(1) and complete the assessment proceedings as expeditiously as his business would permit;

d) In the interregnum, if the Hon'ble Telangana High Court passes any order, obviously the same will govern inter alia the territoriality qua assessment proceedings as this Court is interfering in writ jurisdiction only on NJP violation principle qua impugned assessment orders.

15. Captioned writ petitions are disposed of with aforementioned directives. Consequently, captioned WMPs are also disposed of as closed. There shall be no order as to costs.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

kmi

To

1. The Assistant Commissioner-Income tax
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Investigation Building,
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   Office of the Principal Commissioner of Income Tax-1,
   IT Tower, AC Guards,
   Masab Tank, Hyderabad,
   Andhra Pradesh, 500 004.

+1cc to Mr.Aparna Nandakumar, Advocate, S.R.No.55897

+3cc to Mr.A.P.Srinivas, Advocate, S.R.No.56119

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AK-II(CO)
RGA(29/11/2021)