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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 23.07.2021

CORAM :

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

W.P(MD)No.1952 of 2020
and
WMP(MD)Nos.1637 and 1638 of 2020

Kalidoss Bharath ... Petitioner

vs.

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

Petition filed under Article 226 of the Constitution of India, for issuance of Writ of Certiorari, to call for the records of the respondent in PAN AFVPB1366G vide Order No.ITBA/AST/S/143(3)/2019-20/1022872487(1) dated 22.12.2019 and raised a demand under Section 156 of the Income Tax Act in No.ITBA/AST/S/156/2019-20/1022872526(1) dated 22.12.2019 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.Dilip Kumar, Senior Standing Counsel

ORDER

This writ petition has been filed for issuance of a Writ of Certiorari, to call for the records of the respondent in PAN AFVPB1366G vide Order No.ITBA/AST/S/143(3)/2019-20/1022872487(1) dated 22.12.2019 and raised a demand under Section 156 of the Income Tax Act in No.ITBA/AST/S/156/2019-20/1022872526(1) dated 22.12.2019 and quash the same as ex-facie illegal, arbitrary, without jurisdiction and as against the principles of natural justice.

2.The petitioner is a dealer in Petroleum products and for the assessment year 2017-18, the petitioner filed audit report under Section 44AB of the Income Tax Act and on that basis, assessment has been completed. Subsequently, a notice was issued by the Deputy Commissioner of Income Tax, Thanjavur, on 04.09.2019 under Section 142(1) of the Act, for which, a reply was filed on 15.11.2019 enclosing the statement showing the month-wise purchase and sales effected during the year. Subsequently, the respondent had issued a

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notice under Section 142(1) of the Act seeking fresh details including the details for the assessment year 2016-2017 even though the assessment year is 2017-18. The petitioner sent further reply on 09.12.2019 and thereafter vide letter dated 12.12.2019 sought further time to file the voluminous details upto 26.12.2019. The respondent did not consider the letter dated 12.12.2019 but referred the letter dated 09.12.2019 and passed the assessment order and closed the Portal on 17.12.2019 and therefore, the petitioner has filed the present writ petition stating that the impugned order has been passed against the principles of natural justice and also against the circular issued by the Directorate of Income Tax on 26.12.2019 in which it was informed that the facility for electronic submission of documents shall be automatically closed on 29.12.2019.

3.The learned counsel for the petitioner would state that the respondent has no jurisdiction to assess under e-proceedings when admittedly Section 143(3A) of the Income Tax Act was amended with effect from 01.04.2020 giving the right to make e-assessment proceedings under Section 144 and therefore, the e-assessment order passed by the respondent is bad in law. The learned counsel for the petitioner would further state that the respondent has assessed the income under the amended Section 115BBE of the Act when admittedly the amendment came into effect on 01.04.2017 i.e., from the previous year 2017-2018 i.e., from the assessment year 2018-2019 and not for the assessment year 2017-2018. According to the petitioner, because of the wrong application of the amended provision, huge liability was raised by the respondent and the petitioner is put to great hardship and mental agony and therefore, the petitioner is before this Court.

4.He would further state that even on similar occasion in W.P.No.1178 and 1182 of 2020 dated 27.01.2020, the assessment orders made without granting further time as requested by the assessee, were set aside and the matter was remitted to the respondent for making de nova assessment. Subsequently, the respondent in his proceedings dated 26.03.2021, has passed an order accepting the claim of the assessee and therefore, the learned counsel for the petitioner would state that the assessment orders passed by the respondent herein without giving opportunity to the petitioner herein in spite of his request for adjournment, is a clear violation of the principles of natural justice and therefore, the impugned orders are liable to be set aside on the said ground.

5.The learned Senior Standing Counsel for the respondent would state that when there is an effective statutory appeal available to the petitioner, he cannot bypass the same. He would further state that the petitioner's case was selected for scrutiny through Computer Aided Scrutiny Selection(CASS) in Income Tax Business Application Module and a notice under Section 143(2) of the Act was issued on 09.08.2018 by the Assistant Commissioner of Income Tax, Circle-1, Thanjavur. Further notice under Section 142(1) was issued

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on 04.09.2019 calling for details in connection with cash deposits made during demonitization period to be submitted on or before 12.09.2019 electronically. According to the respondent, the petitioner had submitted details on 15.11.2019 partially and thereafter further notice under Section 142(1) read with Section 129 was issued on 03.12.2019 to furnish accounts and documents to be submitted on or before 07.12.2019. He would further state that that petitioner has filed adjournment petition dated 10.12.2019 seeking further extension of time upto 26.12.2019 and the Assessing Officer did not entertain the adjournment petition because the time limit to complete the assessment expired on 31.12.2019 and therefore, the assessment order was concluded under Section 144 of the Act i.e., best judgment assessment and the impugned orders came to be passed.

6.Heard the learned counsel for the petitioner as well as the learned Senior Standing Counsel for the respondent.

7.Admittedly, the assessment order has been concluded in spite of the petitioner's request seeking further time for making his reply. Admittedly, the petitioner was not given opportunity by the respondent by not considering his adjournment petition dated 10.12.2019, but has referred to only the letter dated 09.12.2019 and has closed the Portal on 17.12.2019. The main contention raised in the counter is that the Assessing Officer did not entertain the adjournment petition of the petitioner, because the time limit to complete the assessment expired on 31.12.2019. The petitioner has not submitted the details as called for through the notice dated 03.12.2019. Since the petitioner has failed to discharge the burden of proof for the cash deposit of SBN note to the tune of Rs.1,84,87,858/-, the respondent had no other option except to conclude the assessment under Section 144 of the Act i.e., best judgment assessment. The said contention cannot be accepted for the simple reason that the petitioner has filed adjournment petition on 12.12.2019 seeking further time upto 26.12.2019. Admittedly, the Assessing Officer did not entertain the said adjournment petition.

8.This Court in similar matters cited by the petitioner where assessment orders passed without granting further time, set aside the assessment orders therein and remitted the matter to the authority concerned for fresh consideration. Admittedly, here also, the petitioner's petition for adjournment has not been considered and therefore, it is a case of violation of principles of natural justice. No personal hearing was also granted. If atleast personal hearing is granted to the petitioner, the petitioner would have explained his case. Though the respondent has raised many other contentions, since the impugned orders have been passed without considering the petitioner's adjournment petition, without adverting to the other merits of the case, only on the ground of violation of principles of natural justice, I am inclined to set aside the impugned orders.

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9.Accordingly, the impugned orders of the respondent in PAN AFVPB1366G vide Order No.ITBA/AST/S/143(3)/2019-20/1022872487(1) dated 22.12.2019 and the demand under Section 156 of the Income Tax Act in No.ITBA/AST/S/156/2019-20/1022872526(1) dated 22.12.2019 are set aside and the matter is remitted back to the respondent to pass fresh order after giving opportunity to the petitioner for making his detailed reply and after affording opportunity of personal hearing, within a period of three months from the date of receipt of a copy of this order.

10.With the above direction, this Writ Petition is allowed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar

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/ /2021

Sub Assistant Registrar(CS)

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To

The Assistant Commissioner of Income Tax,
Income Tax Circle 2(1) Trichy,
3rd Floor, Trichy Main Building,
Williams Road, Cantonment,
Tiruchirappalli-620 001.

ORDER MADE IN
W.P(MD)No.1952 of 2020
DATED : 23.07.2021

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TR(06.08.2021) 4P 2C

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