



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 23.07.2021

CORAM :

WEB COPY

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

W.P(MD)No.1972 of 2020

and

WMP(MD)Nos.1645 and 1646 of 2020

Jaffaorulla Syeaadunnishaa

... 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 BCCPS3685N vide Order No.ITBA/AST/S/144/2019-20/1022967569(1) dated 24.12.2019 and raised a demand under Section 156 of the Income Tax Act in No.ITBA/AST/S/156/2019-20/1022967579(1) dated 24.12.2019 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 BCCPS3685N vide Order No.ITBA/AST/S/144/2019-20/1022967569(1) dated 24.12.2019 and raised a demand under Section 156 of the Income Tax Act in No.ITBA/AST/S/156/2019-20/1022967579(1) dated 24.12.2019 and quash the same as ex-facie illegal, arbitrary, without jurisdiction and against the principles of natural justice.

2.The petitioner is an authorised dealer for Royal Enfield Motorcycles and for the assessment year 2017-18, the petitioner filed return and the assessment has been completed. Subsequently, a notice was issued by the Income Tax Officer, Cuddalore, on 10.08.2018 under Section 143(2) of the Act and thereafter a notice under Section 142(1) of the Act was issued on 21.10.2019 by the respondent. The petitioner filed reply in part on 05.11.2019 and sought time for filing further details. Again on 27.11.2019,

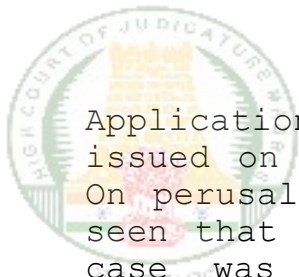


further details were filed. Again on 30.11.2019, entire details were filed. The respondent issued a show cause notice on 05.12.2019 seeking for the first time fresh details including the details for the assessment year 2016-2017 even though the assessment year is 2017-18 and observed that the petitioner filed reply on 05.11.2019 only and granted time upto 08.12.2019. According to the petitioner, even though the Directorate of Income Tax(Systems) has directed the Assessing Officers to grant time upto 29.12.2019 to the assessee for submission of response in the barred scrutiny cases, the respondent arbitrarily made the assessment on 24.12.2019 under Section 144 of the Act 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 10.08.2018 by the Income Tax Officer Ward-2, Cuddalore. On perusal of the return of income filed by the petitioner, it is seen that the total income is more than Rs.10 lakhs and hence the case was transferred to the Jurisdictional Circle, Assistant Commissioner of Income Tax, Circle-2(1), Trichy, Trichy Circle, who issued notice dated 21.10.2019 under Section 142(1) through online calling for details in connection with the scrutiny proceedings and the details about the cash deposits made during the assessment year 2017-18 to be submitted on or before 05.11.2019 electronically. According to the respondent, the petitioner has conveniently omitted to state whether she has filed the details on or before 12.09.2019. The petitioner submitted some details on 05.11.2019, 27.11.2019 and 30.11.2019. Further, a notice was issued on 05.12.2019 calling for some details and explanations on or before 08.12.2019. He would further state that the petitioner had not submitted the details as called for in the notice dated 05.12.2019 and failed to discharge her onus for the cash deposit of SBN noted to the tune of Rs.35,55,500/- and unexplained investment under Section 69 of Rs.17,88,228/- totally Rs.53,43,728/-. Hence, the above said amount of Rs.53,43,728/- under Section 69A was assessed as per Section 115BBE and completed on 24.12.2019 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. Perusal of record shows that the assessment order has been passed on 24.12.2019 without granting time to the petitioner to file reply as per the direction of the Directorate of Income Tax by granting time upto 29.12.2019. The main contention raised in the counter is that the petitioner had been given the longest opportunity from 09.08.2018 till 16.12.2019 and despite the same, she only attempted to protract the proceedings. The petitioner had not co-operated with the department and failed to respond to the notices under Sections 143(2) and 142(1) and also not filed reply nor furnished evidence in response to the show cause notice dated 05.12.2019. Since the petitioner has failed to discharge her onus for the cash deposit of SBN noted to the tune of Rs.35,55,500/- and unexplained investment under Section 69 of Rs.17,88,228/- totally Rs.53,43,728/-, the above said amount of Rs.53,43,728/- under Section 69A was assessed as per Section 115BBE and completed on 24.12.2019 under Section 144 of the Act i.e., best judgment assessment and the impugned orders came to be passed. The said contention cannot be accepted for the simple reason that as per the direction of the Directorate of Income Tax, the petitioner was not granted time upto 29.12.2019.

8. This Court in similar matters cited by the petitioner where <https://hcservices.ecourts.gov.in/hcservices/> 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 was not granted time 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 granting further time to the petitioner to file reply, without advertng 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.

9. Accordingly, the impugned orders of the respondent in PAN BCCPS3685N vide Order No.ITBA/AST/S/144/2019-20/1022967569(1) dated 24.12.2019 and raised a demand under Section 156 of the Income Tax Act in No.ITBA/AST/S/156/2019-20/1022967579(1) dated 24.12.2019 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(CS-)

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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.1972 of 2020
DATED : 23.07.2021

cm(CO)

TR(06.08.2021) 4P 2C