BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: **05.08.2021**
CORAM
THE HON'BLE MR.JUSTICE R.SURESH KUMAR

W.P.(MD)No.10617 of 2021
and
W.M.P(MD).No.8288 of 2021
(Through Video Conference)

Manickam Subramanian .. Petitioner

-Vs-

Assistant Commissioner of Income Tax,
Central Circle-2,
Trichy. ..Respondent

Prayer: Writ Petition is filed under Article 226 of Constitution of India, to issue a Writ of Certiorari, calling for the records on the files of the respondent in Din & Order No:ITBA/AST/S/143 (3)/2021-22/ 1032389648(1) dated 13.04.2021 and quash the same as being an order passed contrary to the principles of natural justice.

For Petitioner : Mr.R.Senniappan

For Respondents : Mr.N.Dilipkumar
Senior Standing Counsel

ORDER

Prayer sought for herein is for a Writ of Certiorari, calling for the records on the files of the respondent in Din & Order No:ITBA/AST/S/143(3)/2021-22/ 1032389648(1) dated 13.04.2021 and quash the same.

2. On 23.06.2018, the Revenue received an information from the police concerned that there has been seizure of money to the extent of more than Rs.2,00,00,000/- (Rupees two crores only) from the petitioner's premises, pursuant to which the revenue conducted search under Section 132 of the Income Tax Act, 1961, (hereinafter referred to as “the Act”) on 26.06.2018. During that search, statement also had been obtained from the Assessee under Section 132(4) of the Act.

3. Pursuant to which belatedly the Assessee filed a return only on 23.08.2019. The case was taken up for scrutiny and a notice under Section 143(2) of the Act was issued on 01.03.2021. Because the revenue found in the return submitted by the Assessee dated 23.08.2019, since had declared the amount of taxable income as only Rs.6,02,050/-(Rupees Six lakhs two thousand and fifty only) such notice under Section 143(2) was issued.

4. Pursuant to the said notice, the Assessee requested for time and a time was given till 05.03.2021 and on 08.03.2021, the petitioner along with Auditor had appeared and still he wanted some more time accordingly, the time was given upto 20.03.2021. Eventhough these times have been given to the Assessee, the Assessee could not produce the relevant documents required by the revenue and ultimately, on 22.03.2021, a final opportunity was given to the Assessee by the revenue to produce the following documents on or before 02.04.2021 by notice dated 29.03.2021:

> "You are requested to furnish the following details **on or before 02.04.2021.**
>
> 1.Evidence like PAN, Aadhar etc., to prove the identity of the person.
>
> 2.Details of Business, profession, Income tax assessment records, details of assets, Liabilities, Bank A/c details to prove credit worthiness.
>
> 3.Nature of the transactions with these persons along with reasons for cash transaction.
>
> 4.You are also requested to produce these persons for examination on oath."

5. At this juncture, it is the case of the Assessee that this notice dated 29.03.2021 was received only on 09.04.2021 by the Assessee, therefore, on the said date, the e-communication requesting ten days time had been given by the Assessee to the revenue, where he made the following request:

> "with reference to your above referred notice, we wish to submit that a portion of details required by your goodselves have already been submitted and I have contacted the parties to provide other details. There are some delay in getting the details and many parties are afraid to come out due to corona pandemic. Hence, I request your goodselves to grant me atleast 10 days time from today to provide details and request for any form of confirmation other than physical appearance due to corona pandemic. Yours, Truly, M.Subramanian."

6. However the revenue, since the Assessee had not responded to the final notice dated 29.03.2021, furnishing reply on or before 02.04.2021, had decided to proceed and accordingly the scrutiny assessment order under Section 143(3) was issued on 13.04.2021 as against which the petitioner filed the present writ petition.

7. Heard Mr.R.Senniappan, learned counsel appearing for the petitioner, who mainly made a contention that only on the ground of violation of principle of natural justice, as no opportunity had been given or personal opportunity of being heard had been given to the Assessee, the petitioner had invoked the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India and filed this writ petition.

8. In this context, the learned counsel would contend that under the notice dated 29.03.2021, various documents were sought for nearly about 10 years business of the persons from whom the amount has been received by the petitioner at the relevant point of time, and since the revenue directed the petitioner/Assessee to produce those persons for personal examination on oath before the authority concerned of the revenue, that could not be made possible for the petitioner because, during that time, due to Pandemic, it had a tough time for the petitioner and others to communicate and to come before the revenue for personal examination on oath.

9. More over, since lot of details were sought for by the revenue in the notice dated 29.03.2021, the same could not be immediately collected, hence, ten days time was sought for by the e-communication of the petitioner dated 09.04.2021. However, without considering the said request, since hurriedly the impugned order of assessment was passed on 13.04.2021, the same is liable to be interfered with on the only ground of violation of principles of natural justice. Therefore, the learned counsel for the petitioner contended that the impugned order is liable to be interfered with.

10. Per contra, Mr.N.Dilip Kumar, learned Senior Standing Counsel, appearing for the respondent would submit that, though huge amount of hot cash were seized from the premises of the petitioner and subsequently, Section 132 search also was conducted by the revenue authority and statement was also obtained from the Assessee under Section 132(4) of the Act, based on which, when the revenue expected a proper declaration and return in this regard, the Assessee since had filed the return belatedly in the year 2019 only for a sum of Rs.6,02,050/-.(Rupees Six lakhs two thousand and fifty only), therefore, the case was taken as a scrutiny case and hence notice was issued under Section 134(2) of the Act. When that being so, the source from whom huge money had been availed by the petitioner should have been explained before the revenue authority with supporting documents and in this regard, an individual opportunity had been given to the Assessee and the same has not been utilised by the Assessee and ultimately, final tax order was given by way of notice dated 29.03.2021, even the same also had not been utilised and therefore, the revenue decided to proceed against the petitioner and pass the scrutiny assessment order, which is impugned herein. Therefore, the learned Senior Standing Counsel would submit that the said order does not require any interference from this Court on the ground of violation of principles of natural justice. In this context, if at all, the petitioner is aggrieved, he can file an appeal as provided under the Act before the Commissioner of Income Tax and before doing that since the petitioner has approached this Court for the alleged reason of violation of principles of natural justice, this writ petition need not be entertained and therefore it can be dismissed, he contended.

11. I have considered the rival submissions made by the learned counsel appearing for the parties and have perused the materials placed before this Court.

12. Though some earlier opportunities were given up to 26.03.2021 to the petitioner/Assessee, within which period whether the documents sought for by the revenue can be collected by the petitioner and produced the same before the authority itself is a question.

13. However, in the last notice dated 29.03.2021, several details since had been asked for as quoted hereinabove from the Assessee, it should have been produced on or before 02.04.2021, that is, within two or three days. Within the shortest possible time, during the Pandemic period, it can not be reasonably expected that the Assessee would be able to collect all these documents and produce before the revenue.

14. In this context, it is a further case of the Assessee that, the said notice dated 29.03.2021 had been received by the petitioner only on 09.04.2021 and on that ground a request had been made through e-communication that ten days time should be given to the petitioner. However, before which, on 30.04.2021, since the impugned order has been passed, this Court feels that, some more opportunity could have been given to the petitioner Assessee to produce those documents as has been sought for by the notice of the revenue dated 29.03.2021. In that view of the matter, this Court feel that the impugned assessment order can be interfered with and the matter can be remitted back to the revenue for reconsideration after giving an opportunity to the petitioner to produce those documents as claimed by the revenue under the said notice dated 29.03.2021 within a reasonable time which should also be fixed by this Court.

15. In that view of the matter, this Court is inclined to dispose of this writ petition with the following order:

"that the impugned order is hereby set aside and the matter is remitted back to the assessing authority for reconsideration. While reconsidering the same, three weeks time is hereby given to the Assessee to produce all the documents as required by the revenue, by notice dated 29.03.2021, including the production of the persons mentioned by the Assessee in the list of persons from whom the amount had been availed by the petitioner Assessee, before the revenue. In this regard, a date within three weeks can be fixed by the revenue by giving a notice to the petitioner enabling the petitioner to submit those documents and to produce the persons mentioned therein in the notice dated 29.03.2021. Once such documents are produced and the persons were also produced for examination on oath before the revenue, the revenue can proceed to decide the matter finally and final assessment order in this regard can be passed thereafter by the revenue. It is made clear that within a period of three weeks from the date of receipt of a copy of this order, if the Assessee is not able to comply with the aforesaid and place the documents and produce the persons for examination on oath, it is open to the respondents revenue to proceed in the matter and pass final orders based on the available records."

16. With these observations and directions, this writ petition is disposed of. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

PJL

Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the Advocate/litigant concerned.

To
Assistant Commissioner of Income Tax,
Central Circle-2,
Trichy.

+1 CC to M/s.S.RAJA JEYA CHANDRA PAUL, Advocate (SR-25422[F] dated 05/08/2021)

+1 CC to M/s.N.DILIPKUMAR, Advocate (SR-25457[F] dated 06/08/2021)

W.P.(MD)No.10617 of 2021

05.08.2021

CN(28.07.2021) 6P 4C