BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 09.08.2021
CORAM:
THE HON'BLE MR.JUSTICE R.SURESH KUMAR
W.P.(MD)No. 13822 of 2021
and
W.M.P(MD) Nos. 10793, 10794 & 10796 of 2021

M/s.PSR Bankers
4, French Teacher Street,
Karaikal - 609 602.
Puducherry (UT) - 609 602,
through its Partner
PAN : AAGFP 7789P ...Petitioner

Vs.

1.The Assistant Commissioner of Income Tax,
Central Circle-1, Trichy
Income Tax Department,
No.44, Williams Rd,
Cantonment,
Tiruchirappalli,
Tamil Nadu - 620 001.

2.The Principal Commissioner of Income Tax,
Madurai -1,
Income Tax Department,
CR BLDG, 2 , V P Rathinasamy Nadar Road,
Viswanathapuram,
Madurai,
Tamil Nadu - 625 002. ... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records of the Writ petitioner/Assessee on the file of the file of the first respondent to quash the impugned order, dated 16.06.2021 passed U/s.143(3) of the Act for the Assessment year 2018-19 in ITBA/AST/S/143(3)/2021-22/ 1033502985(1) and consequently direct the first respondent to complete the fresh assessment on the solitary issue for the assessment year 2018-19 after granting reasonable/sufficient opportunity of hearing.

For Petitioner : Mr.S.Sridhar
For Respondents : Mr.N.Dilip Kumar
Standing Counsel

O R D E R

The prayer sought for in this Writ Petition is for a Writ of Certiorarified Mandamus, to quash the impugned order of the first respondent, dated 16.06.2021 passed U/s.143(3) of the Act for the Assessment year 2018-19 in ITBA/AST/S/143(3)/2021-22/ 1033502985(1) and consequently direct the first respondent to complete the fresh assessment on the solitary issue for the assessment year 2018-19 after granting reasonable/sufficient opportunity of hearing.

2.For the assessment year 2018 and 2019 a survey had been conducted on 30.03.2018. The case was selected for scrutiny under Section 143(3) of the Income Tax Act, 1961, in order to verify the survey findings. Hence, notice under Section 143(2) was issued on 27.09.2019. Thereafter, notice under Section 142(1) was issued to the assessee on 12.04.2021, to explain as to why the difference in stock value to the tune of Rs.60,17,990/- (Rupees Sixty Lakhs Seventeen Thousand Nine Hundred and Ninety) found during the course of survey, should not be considered as an unexplained investment, in addition to the returned income.

3.In response to the same, on 17.04.2021, a reply had been given by the petitioner-assessee, wherein, *inter-alia,* he had stated that they are willing to produce further evidences that may be required at the end of the revenue to show that the difference in weightage is on account of transfer of jewellery from sister concern. Pursuant to which, notice under Section 142(1) dated 22.04.2021 was delivered to the petitioner-assessee electronically on 22.04.2021 to submit in order to verify the income expenditure of the firm with the following details:

> "In continuation of your reply dated 17.04.2021, you are requested to furnish the following details / evidences.
>
> 1.Day Book, Ledge, Stock Register, Purchase bills & Sales bills of M/s.PSR Thangamaligai to prove that the entity had the stock in question on its books of account, on the date of survey.
>
> 2.Evidence to prove the purported internal transfer of stock from M/s.PSR Thangamaligai to M/s.Shree Jewellery. Details as to the nature, date of such transfer.
>
> 3.Assessment details of M/s. PSR Thangamaligai & relation between M/s. PSR Thangamaligai, M/s.PSR Bankers & M/s.Shree Jewellery.
>
> 4.Reasons why stock belonging to a different entity was kept in your premises.
>
> You are requested to furnish all these details evidence on or before 25.04.2021. You have already been afforded sufficient opportunity and time to establish

your claims.
Assessment will be completed u/s.144 of the Income Tax Act, 1961 based on the documents available record, if you fail to
a) comply to this notice
b) submit the document / relevant documents in support of your claim.
c) furnish all relevant documents / information aforesaid (1) to (4) in this notice.
This is the final opportunity. No further notice / opportunity will be given in this regard."

4.In response to the same, the assessee sent a letter on 22.04.2021 seeking for time till 27.04.2021, due to the second wave of Covid-19 pandemic. Though the time upto 27.04.2021 also had been given in this regard, by the revenue, it is the case of the assessee that exactly on 27.04.2021, the District Disaster Management Authority of Karaikal, where the petitioner-assessee located, issued a notification on 27.04.2021 issued with so many restrictions by way of lock down procedure up to 30th April 2021. Therefore, according to the petitioner-assessee, he could not move and collect the documents and produce the same before the respondent-revenue on 27.04.2021. However, subsequently, no further time had been given and ultimately on 16.06.2021, assessment order had been passed where the stock which they found during the survey had been added with the income and accordingly, demand has been made for payment of tax. Challenging the said assessment order, dated 16.06.2021, the present writ petition has been filed with the aforesaid prayer.

5.In this context, Mr.S.Sridhar, learned counsel appearing for the petitioner has submitted that the petitioner already made response by reply, dated 17.04.2021, where since further documents were required, the petitioner-assessee had expressed his willingness to produce the same for which, though time was given only upto 27.04.2021, on that date, in view of the continuous pandemic situation where lock down procedure also was issued by the District Administration, the petitioner-assessee could not move and to produce the documents, however, subsequently, without extending the time after lock down procedure is lifted, since the impugned order of assessment was passed. Hence, it is the case of violation of the principles of natural justice, as no opportunity was given to the petitioner to respond as expressed the willingness of the assessee. Therefore, on that ground the impugned assessment can be interfered with, he contended.

6.Heard Mr.N.Dilip Kumar, learned Standing Counsel for the Revenue, who on instructions, would submit that, the entire detail as to how many times opportunities had been given to the assessee had been given in detail in the impugned assessment order itself, where initially notice under Section 143(2) was issued on 27.09.2019 and subsequently, under Section 142(1) on 12.04.2021. Thereafter, time was sought for by the petitioner-assessee in his reply, dated 17.04.2021, that was also having been accepted, further notice was given on 22.04.2021, giving time to the assessee by adjournment communication sent through e-mail, dated 24.04.2021, wherein, time was given, as per the request of the assessee upto 27.04.2021. Even though such a long-rope had been given upto 27.04.2021, since the assessee has not responded, the revenue proceeded to issue the assessment order. Therefore, the prime ground raised by the petitioner that he was not given an opportunity and thereby the revenue has violated the principles of natural justice, absolutely having no basis therefore, on that ground the impugned assessment order cannot be interfered with, he contended.

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

8. Normally as against the impugned assessment, appeal is provided under the Act. However, now the assessee has approached this Court by way of the present writ petition only on the alleged ground that there has been a violation of principles of natural justice. In this context, though arguments and counter arguments were advanced by the learned respective counsel appearing for the parties as recorded herein above, the controversy is only limited, where as to whether the opportunity sought for by the petitioner at last till 27.04.2021, though had been given whether the petitioner-assessee had enough time to supply those documents before the revenue is the only question.

9. In this context, it is brought to the notice of this Court by the learned counsel appearing for the petitioner-assessee that exactly on 27.04.2021, the District Administration had issued the lock down procedure. Therefore, the petitioner-assessee could not move. Thereafter, the learned counsel for the petitioner-assessee would submit that, unless and until, a hearing date is provided by a written communication of the revenue, even the representative of the petitioner-assessee would not be permitted to enter upon the office of the respondent-revenue and therefore, merely because the assessment order had been placed only on 16.06.2021, it cannot be expected that the assessee on or before passing such assessment order, can suo-motu extend its time and to produce those documents, which were sought to be produced, beyond 27.04.2021 i.e., before 16.06.2021.

10.The said submission made by the learned counsel appearing for the petitioner-assessee is appealing to this Court because, subsequent to the extension given upto 27.04.2021, no further extension had been given and it is also a fact that during the relevant period there has been a lock down procedure due to second wave of Covid-19 pandemic.

11.Therefore, considering these peculiar situation, this Court feels that, a final opportunity of two weeks time can be granted by the revenue to the petitioner within which whatever the documents required by the revenue to substantiate the claim of the petitioner that the additional stock which were found during the survey belongs to the other sister concern of the petitioner, can be produced. Despite this final opportunity, if the petitioner-assesseee does not come forward to produce the documents to the satisfaction of the respondent-revenue, it is open to the respondent-revenue to pass a fresh order, of-course, confirming the earlier assessment order, which is impugned herein.

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

(i) that the impugned order is set aside only for the purpose of remanding back the matter to the respondents for reconsideration by giving a final opportunity of two weeks time from today to the petitioner-assessee to respond by way of producing the necessary documents, as required by the revenue to substantiate the claim of the petitioner that the additional stock found during the survey does not belong to the petitioner-assessee, but belongs to its sister concern.

(ii)Within two weeks period, if the petitioner-assessee does not come forward to produce those documents to the satisfaction of the revenue, it is open to them to proceed further and to pass orders afresh by way of assessment and in this context, no further grievance can be espoused by the petitioner on the ground that opportunity has not been given.

13.With these observations and directions, this writ petition is disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (P&A)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

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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

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Viswanathapuram,
Madurai, Tamil Nadu - 625 002.

+1 CC to M/s.S.SRIDHAR, Advocate (SR-25799[F] dated 10/08/2021)

+1 CC to M/s.N.DILIPKUMAR, Advocate (SR-25828[F] dated 10/08/2021)

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09.08.2021

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