BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **10.08.2021**

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THE HON'BLE MR.JUSTICE R.SURESH KUMAR

W.P.(MD)No.13850 of 2021

and

W.M.P(MD).No.10809 of 2021

(Through Video Conference)

Jayaraman Madhan Mohan .. Petitioner

Vs.

Assistant Commissioner of Income Tax,
Central Circle-2,
Kulamangalam Main Road,
Meenambalpuram,
Madurai- 625 002. ..Respondent

Prayer: Writ Petition is filed under Article 226 of Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records on the file of the respondent and quash the impugned order in ITBA/AST/S/153C/2021-22/1033636859(1) dated 23.06.2021 passed by the respondent as illegal and consequently direct the respondent to pass a fresh assessment order after granting the petitioner, sufficient opportunity of being heard and opportunity to cross examine the statements of persons relied upon in accordance with law.

For Petitioner : Ms.Vandana Vyas
for Mr.R.Sivaraman
For Respondent : Mr.N.Dilip Kumar
Standing Counsel

ORDER

Prayer sought for herein is for a Writ of Certiorarified Mandamus, calling for the records on the file of the respondent and quash the impugned order in ITBA/AST/S/153C/2021-22/1033636859 (1) dated 23.06.2021 passed by the respondent and consequently direct the respondent to pass a fresh assessment order, after granting the petitioner, sufficient opportunity of being heard and opportunity to cross examine the statements of persons relied upon in accordance with law.

2.A search was conducted on October, 2018 at one M/s.V.V.Mineral Group, which disclosed some information to the revenue to come to a conclusion that a sum of Rs.10,00,00,000/-

(Rupees Ten crores only) out of a total sum of Rs.54.34 crores had been dealt with by way of cash, that, triggered the revenue to initiate the proceedings under Section 153(c) of the Income Tax Act, 1961 (in short 'the Act'). During the search, it seems to have found some discrepancy in the account to the extent of Rs.10,00,00,000/- (Rupees Ten crores only) out of Rs.54.34 crores for the Financial year 2013-2014. Subsequently, the case was transferred to the Central Circle, therefore, it took some time to take up further action in this regard. Therefore, on 23.02.2021, notice under Section 153(c) was issued requiring the Assessee to file return. Since there was no response from the Assessee, the revenue sent a notice under Section 142(1) on 15.03.2021, calling for the copy of the return filed by the Assessee under Section 153 (c) of the Act. In response to the same, the Assessee filed the return for the income of Rs.41,68,490/-(Rupees Forty one lakhs sixty eight thousand four hundred and ninety only) on 18.03.2021, by which, the earlier income declared in the return, seems to have been reiterated, therefore, not satisfying with the same, the revenue then issued notice under Section 143(2) dated 22.03.2021, whereby, a hearing was fixed to be held on 29.03.2021.

3.In response to the said notice, the Auditor of the Assessee appeared on 29.03.2021 and filed the power given by the Assessee to the said Chartered Accountant/Firm. Thereafter, the case was posted for hearing as per notice dated 01.04.2021 on 08.04.2021, and subsequently, the revenue realised that the questionnaire had not been attached with the notice dated 01.04.2021, therefore, on 02.04.2021, a further notice under Section 142(1) annexing the questionnaire to be answered by the Assessee was sent, where, the hearing was fixed on 09.04.2021.

4.In this context, it is the case of the petitioner Assessee that, the 09.04.2021 hearing was refixed on 04.05.2021, and on 04.05.2021, only a part of the documents were able to be procured and submitted by e-mail communication of the Auditor of the Assessee and after having submitted the same, the Auditor of the Assesse had sent a further e-mail communication on the very same date, that is, on 04.05.2021, that, the concerned person or partner of the Auditor Firm of the Assessee, since had been tested Positive of Covid-19, he requires sometime.

5.The said request had been rejected by further e-mail communication of the revenue, and thereafter, no further time was given and therefore, according to the Assessee, there could be no chance of having access with the respondent revenue to file additional documents as they required under the notice. Only at that juncture, the revenue passed the impugned assessment order dated 23.06.2021, directing the Assessee to pay the tax under

Section 143(3) r/w 153(c) of the Act. Aggrieved over the said assessment order dated 23.06.2021, on the sole ground that no proper opportunity had been given as the time extension application submitted by the petitioner Assessee, on the ground that the authorised person, that is, the Auditor concerned since got Covid-19 Postive, has got rejected by the revenue, the Assessee could not produce the necessary documents as claimed or required by the revenue. Therefore, the Assessee on the sole ground of alleged violation of principle of natural justice has moved this writ petition challenging the impugned assessment order.

6.Heard Mr.R.Sivaraman, learned counsel appearing for the petitioner, who, having reiterated the aforesaid, would contend that, because of the medical reasons, where the concerned partner of the partnership firm, who are the authorised representative of the Assessee as per the power given to them, which infact have been accepted by the revenue, was tested Positive of Covid-19 and based on the medical certificate in this regard, declaring that the concerned Auditor was tested Positive of Covid-19, when a request was made to the revenue, the same has been turned out and no further time was given, therefore, without giving any further time on medical reason, since the impugned assessment order has been issued, it is a case of violation of principle of natural justice. Therefore, on that sole ground, the petitioner has moved this writ petition, hence, the learned counsel for the petitioner seeks indulgence of this Court.

7.Per contra, Mr.N.Dilip Kumar, learned Standing Counsel appearing for the respondent revenue would submit that, though the search was conducted in the year 2018, it had taken some time to issue notice under Section 153(c) only in February, 2021 and in between the said time, the Department had taken a decision to transfer the case to the Central Circle. Therefore, in this regard, if at all, the Assessee wanted to face the revenue, as they knew that a search had already been conducted in October, 2018, they could have made ready all those documents to submit before the revenue, when it is called for. That apart, when notice was issued under Section 153(c) on 23.02.2021, no return was filed, however, belatedly, the return was filed stating the earlier return submitted in this regard being reiterated in March, 2021. Therefore, not satisfied with the same 143(2) notice was issued, in response to the same, the Auditor of the Assessee, claimed to be the authorised representative, filed his power and he did not file the documents, which were sought for. Therefore, though earlier notice was issued under Section 142(1) on 01.04.2021, subsequently, another notice under Section 142(1) was issued on 02.04.2021. This time, the questionnaire was annexed and therefore, it was expected that the said questionnaire annexed under Section 142(1) would be responded properly by the Assessee for which the hearing date was fixed on 04.05.2021.

8.Therefore, the petitioner Assessee was given enough opportunity and he was having enough time to respond from October, 2018 till May, 2021, therefore, on 04.05.2021, since the Assessee through his authorised representative could not produce the relevant documents and only part of the documents had been filed and for the remaining documents, when they are going to file has not also been stated, except sending a mail stating that the concerned partner of the Auditor/Firm, that is, the representative of the Assessee tested Covid-19 Positive, therefore, the said flimsy reason given was not accepted by the revenue, therefore, the revenue proceeded to go ahead with the assessment and passed the assessment order dated 24.06.2021, which is impugned herein. Therefore, the learned Standing Counsel would submit that, in this case, since enough opportunity had already been given to the Assessee, it cannot be considered as a case of no opportunity was given. Therefore, on the alleged ground of violation of principle of natural justice, the assessment order cannot be assailed before this Court invoking the extraordinary jurisdiction under Article 226 of the Constitution of India and in this regard, if at all, the petitioner Assessee is aggrieved, he can file a regular appeal under the Act, hence on this ground alone, the writ petition cannot be entertained and liable to be dismissed, hence, he seeks dismissal of this writ petition.

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

10. Up to 04.05.2021, there has been no quarrel with regard to the correspondence between the respondent and the Assessee. Finally as per 142(1) notice annexed with questionnaire dated 02.04.2021, date of hearing was fixed on 04.05.2021. On the date, it is the definite case of the petitioner Assessee that his authorised representative, that is, Auditor concerned since had been tested Positive of Covid-19, could not appear, however, a part of the documents, which were readily available at the time had been sent through e-mail. The medical certificate to that effect also had been sent with a request to give further time, however, the same has been turned out and the communication rejecting the request of the petitioner for extending time has been communicated to the company e-mail address, which was closed long years back, however, with great difficulty, that mail has been received by the petitioner Assessee, where also the language used is that the response due Nil, for submission of notice under

Section 142(1) is extended upto NIL. Such a technical language which has been used, which could not be understood by the Assesee whether the further time has been extended or has been rejected. Be that as it may, insofar as the said request of the Assessee side, to give further time for production of all the relevant documents, either in person or through e-mail, for which a date can be given by the revenue is concerned, it was a request made purely on the basis of medical ground, as the concerned Auditor, who has been authorised by the Assessee to represent or the Auditor Firm concerned, since tested Positive of Covid-19 and a certificate to that effect given by the medical laboratory has also been annexed, this Court feel that the said request could have been considered positively by the respondent revenue and a reasonable time, as a final chance could have been given.

11. If such a chance had been given to the petitioner Assessee to respond, as the revenue is going to pass the assessment order only at the end of June, 2021, no prejudice would have been caused to the revenue, therefore, this Court feel that without giving such a reasonable time as a last chance to respond to the petitioner Assessee, since the Assessment order has been passed, the ground urged by the petitioner Assessee that there is a violation of principle of natural justice is appealing to this Court and therefore on that ground, this Court is inclined to entertain this writ petition and dispose of the same with following order:

> 'that for the purpose of remanding the matter back to the respondent revenue for reconsideration by giving some more reasonable time as a last chance to respond, the impugned order is hereby quashed and accordingly, the matter is remitted back to the respondent for reconsideration.'

12. During the reconsideration process, the revenue shall give three weeks time to the petitioner Assessee to make a complete response as per the last notice dated 02.04.2021 issued under Section 142(1) of the Act and accordingly, within the said three weeks period, the petitioner Assessee shall respond positively without fail, and based on which a fresh assessment order can be passed by the revenue, on merits and in accordance with law. It is made clear that within the three weeks, if there is no response or there is no full response for whatever reason to be claimed by the Assessee, it is open to the revenue to proceed with the matter and pass orders of assessment, after completion of the three weeks period. The three weeks period shall commence from the date of receipt of a copy of this order.

13. With these directions, this writ petition is disposed of.

However, there shall be no orders as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (AE)

// 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
The Assistant Commissioner of Income Tax,
Central Circle-2,
Kulamangalam Main Road,
Meenambalpuram,
Madurai- 625 002.

+1 CC to M/s.R.SIVARAMAN (SR-25797[F] dated 10/08/2021)

+1 CC to M/s.N.DILIPKUMAR, Advocate (SR-25831[F] dated 10/08/2021)

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