BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **16.09.2021**

CORAM

THE HON'BLE MR.JUSTICE R.SURESH KUMAR

W.P.(MD)No.16695 of 2021
and
W.M.P.(MD)No.13593 & 13594 of 2021

Nagalinga Nadar. M.M.
Rep. by its partner M.Jikki ...Petitioner

-Vs-

1. The Additional/Joint/Deputy/Assistant Commissioner of Income Tax/Income Tax Officer,
Income Tax Department,
National Faceless Assessment Centre,
Delhi

2. The Income Tax Officer,
Ward – 3, Income Tax Department,
Madura Coats Compound, Railway Feeder Road,
Virudhunagar,
Tamil Nadu – 626 001. ... Respondents

Prayer: Writ Petition filed under Article 226 of Constitution of India, to issue a Writ of Certiorari, calling for the records of the Respondent No.1 contained in its assessment order bearing DIN: ITBA/AST/S/143(3)/2021-22/1035116185(1) passed under Section 143(3) read with Section 144B of the Income Tax Act, 1961 dated 26.08.2021, for PAN:AAFFM6487J, assessment year (AY) 2018-19, and all proceedings in furtherance to the said order thereof, and to quash the same as arbitrary, unjust and illegal.

For Petitioner : Mr.R.V.Easwar
Senior Counsel
For M/s.K.Govindarajan

For Respondents : Mrs.S.Srimathy
Senior Standing Counsel

O R D E R

Prayer sought for herein is for a Writ of Certiorari, calling for the records of the Respondent No.1 contained in its assessment order bearing DIN:ITBA/AST/S/143(3)/2021-22/1035116185(1) passed under Section 143(3) read with Section 144B of the Income Tax Act, 1961 dated 26.08.2021, for PAN:AAFFM6487J, assessment year (AY) 2018-19, and all proceedings in furtherance thereof, and to quash the same.

2.That the petitioner is a Firm and engaged in business of purchase and sale of edible oil as a trader. It had filed return of income on 20.09.2018 for the Assessment Year 2018-19, declaring the total income of Rs.16,400/-. Therefore, the revenue, thought of selecting the case for scrutiny under CASS (Computer Aided Scrutiny Selection) for the verification of transactions. Accordingly, notice under Section 143(2) of the Income Tax Act, [in short 'the Act'] dated 22.09.2019 was issued. Notice under Section 142(1) of the Act also along with the questionnaire, was issued on 28.12.2020, and the response was directed to be made on or before 06.01.2021.

3.In response to the same, the Assessee submitted documents as well as information, vide their submission, dated 12.01.2021. Thereafter, notice under Section 142(1) was issued dated 03.02.2021 and 04.02.2021 to the Assessee, fixing the date of compliance on 08.02.2021.

4.Since the Assessee seems to have given certain sources for unsecured credit, notice were given under Section 133(6), to the assessee and to the lenders, who claimed to have given unsecured loan or credit to the Assessee. The Assessee filed further submissions on 07.02.2021 and 08.02.2021, which were considered by the revenue.

5.After considering the reply or submissions made by the Assessee, the revenue has come to the conclusion that, insofar as the unsecured credit claimed by the Assessee is concerned, which were made by three persons or entities and from each of such persons or entities, heavy amount was transacted to the Assessee's account as unsecured credit. Also the Assessee was asked by notice, dated 28.12.2021 as to the details of unsecured loan, copy of ITRs and a copy of bank accounts of the persons, from whom these unsecured loans have been accepted to substantiate the identity, credit-worthiness and genuineness of the lenders. In response to the same also, the Assessee had given details on 12.01.2021, which were also considered by the revenue.

6.From those details furnished by the Assessee, with regard to the identity, credit-worthiness of the lenders, the revenue was able to find out that, one of the creditors, Manickavel Edible Oil Private Limited had filed ITR for the Assessment Year 2018-19. for a total income of Rs.2,26,40,520/-, however, another lender, namely, Sri Nagalainga Vilas Oil Mills is concerned, it has filed ITR for the Assessment Year 2018-19 only for a total income of Rs.1,35,580/-.

7.Therefore, revenue, thought of issuing notice under Section 133(6) of the Act, dated 04.02.2021 to the lenders asked them to provide the copy of Audit report, profit and loss accounts, balance sheet, etc.

8.In response to the notice, both the lenders have provided similar reply and stated that, it has advanced money to various sister concerns and has also received funds from them. Those details also were subsequently examined by the revenue. According to the revenue, on the examination of those details submitted both by the Assessee as well as the lenders, a position has emerged under which, the revenue has found that the Assessee has been following NIL income ITR since many years, and it filed return of income declaring a sum of Rs.16,400/- in the year under consideration. The comparative table of turnover, purchase, expenses, profit, etc., for Assessment Year 2017-18 and 2018-19 also have been unearthed and stated by the revenue. Therefore, the revenue had come to a conclusion that, the perusal of the said comparative table has made it clear that, it has a typical balance sheet nature with high values of unsecured loans, creditors on liability side and debtors or loans and advances on asset side, therefore, it did not have any significant fixed asset or any capital, and similar trend can be noticed for the prior year also. The revenue also seems to have found that the said lender , namely, Sri Nagalainga Vilas Oil Mill also filed ITR on the total income of only Rs.1,34,580/-, however, it claimed to have given unsecured loan to the Assessee amounting to Rs.41,34,69,610/-.

9.In view of these revelations, the revenue thought of invoking Section 68 of the Act, and accordingly, the revenue issued a show cause notice on 31.05.2021, proposing an addition of the said Rs.41,34,69,610/- under Section 68 of the Act, on account of the unsecured loan taken from Sri Nagalainga Vilas Oil Mills, that is, one of the lenders and asked the show cause. In response to the same, Assessee filed submissions dated 02.07.2021, 14.07.2021 and 07.08.2021 and it has also raised objections on the proposed addition.

10. These objections and the reply given by the Assessee in response to the notice proposing to make such addition, were considered by the revenue, and ultimately, the revenue has come to the conclusion that the said sum of Rs.41,34,69,610/- taken during the year as unsecured loan from Sri Nagalinga Vilas Oil Mill, is to be added to the total income of the Assessee under Section 68 of the Act, and accordingly, the assessment orders were issued, ofcourse, along with the interest and penalty, etc. Challenging the said assessment order, dated 26.08.2021, the petitioner has moved the present writ petition with the aforesaid prayer.

11. Mr.R.V.Easwar, learned Senior Counsel appearing for the petitioner/Assessee, has made a submission only on one aspect. He states that, normally as against the impugned assessment order, the Assessee has to be relegated to file an appeal under the Statute, however, in the present case, since the assessment has been made under the new scheme called "Faceless Assessment Scheme", though the same has been introduced from the year 2019, very recently, it has given a statutory backing by insertion of Section 144(B) in the IT Act and, under the said scheme, throughout the country, the Faceless Assessment Scheme Authority can take any return, any case for scrutiny and reassessment could be made, where, during the process, absolutely, there could be no chance of meeting point between the officials concerned of the IT Department and the Assessee or their representatives.

12. In view of the new scheme, which has been recently introduced, and under the said scheme only the present assessment has been made and completed, and most of the time, when these assessment was taken place, the country was running with COVID-19, therefore, for all these reasons, eventhough, there has been a chance for the Assessee to ask for a personal hearing, the Assessee, has missed the chance, by admittedly, has not asked for such personal hearing.

13. Therefore, the learned Senior Counsel would contend that, insofar as the proposed addition is concerned, to the extent of more than 40 crores, since it is a huge sum, the petitioner/Assessee definitely would be able to satisfy the authorities of the revenue by showing the books of accounts as well as the bank transactions that those credit, though unsecured, accepted from the lender, was the genuine transaction, and in this regard, mere filing of documents for the scrutiny or examination of the revenue may not be sufficient to satisfactorily convince the revenue officials, and therefore, in that regard, it become incumbent on the part of the Assessee to seek for a personal hearing, though he missed that opportunity at the first instance.

14. Hence, the learned Senior Counsel makes an appeal before this Court, and only for this very limited prayer, the petitioner/Assessee has approached this Court, knowing well that it has got an appeal remedy.

15.I have also heard Mrs.S.Srimathy, learned Standing Counsel appearing for the respondent Income Tax Department, who would submit that, though a huge amount to the extent of more than 40 crores was claimed to have been accepted by way of unsecured credit or loan from a third party, which claimed to be a sister concern, however, the lender has shown the total income of the relevant year only to the extent of 1,35,580/- rupees, therefore, these transaction can very well be brought under Section 68 of the Act, and in this context, the genuineness and credit worthiness of the lender has to be examined.

16. Therefore, after invoking the power under Section 68, the genuineness and credit-worthiness of the lender was assessed and examined by scrutinizing the documents submitted both by the Assessee as well as the lender , and thereafter only, after thorough scrutiny, the revenue has come to the conclusion that, the said amount of more than 40 Crores rupees, has to be added in the account of the petitioner/Assessee as an additional income.

17. In this context, learned Standing Counsel for the Income Tax Department would further submit that, before passing the impugned assessment order, enough opportunities were given, atleast four time notices had been given and in each of the time, the Assessee has promptly responded and produced the documents, so, what are all the documents available with the petitioner/Assessee had been procured from the Assessee, and those documents having been scrutinized, the revenue has come to such a conclusion.

18. The learned Standing Counsel would further add that, apart from the notice given and the documents were procured from the Assessee, further notice had been given to the lenders also and in response to the same, the lenders also had given their own documents to establish the said transactions, especially, the transaction of the lenders, who claimed to have credited by way of a loan to the Assessee to the extent of more than 40 crores, therefore, after giving all such opportunities to the petitioner/Assessee, the revenue since has come to the conclusion and the assessment has been made by adding the said amount, which is a huge amount, for which, absolutely, there is no scope for any escape, the learned Standing Counsel would submit that the impugned assessment order cannot be assailed on the ground of violation of principles of natural justice and therefore, if at all, the petitioner/Assessee has got any grievance over the assessment order, which is impugned herein, he can very well be relegated to the AppellateAuthority to prefer a regular appeal.

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

20. It is a settled proposition that, insofar as the order in original that is the order of assessment passed by the assessing authority is concerned, the appeal would lie before the appellate authority, as against which, further appeal also would be there before the ITAT. In such cases, if an Assessee wants to assail the order of assessment passed by the assessing authority/original authority, directly by making the writ petition before this Court invoking the extra-ordinary jurisdiction under Article 226 of the

Constitution of India, there are three exceptional circumstances, one such circumstance is violation of principles of natural justice.

21. This is the only principle, now, is projected by Mr.R.V.Easwar, learned Senior counsel appearing for the petitioner/Assessee, by stating the reason that, though notices have been given, response have been received from the Assessee, in order to explain through the documents produced to establish that the transactions in question was genuine transaction, there must be a personal hearing, which could have been asked by the Assessee, but, due to the change of procedure under Faceless Assessment Scheme, under which the present assessment has been made, the petitioner/Assessee, inadvertently, has missed it.

22. Apart from this reason, no other ground has been urged, no other reason has been stated and no other plea has been made by the learned Senior counsel appearing for the petitioner/Assessee warranting interference of this Court.

23. Therefore, insofar as the merits of the case is concerned, this Court need not traverse and those issues can once again be gone into by the assessing authority, if the matter is remitted back to them, on the sole ground of alleged violation of principles of natural justice.

24. Here in the case in hand, as pointed out by the learned Senior counsel, a huge sum has been added in the income of the Assessee for the concerned assessment year. Whether such a huge sum is a taxable income or not, is a major question to be decided in the issue, however, before going into the merits of that issue, whether complete opportunity had been given to the petitioner/Assessee, which includes the personal hearing. In this regard, very fairly, the learned Senior counsel has submitted that, specifically that chance of personal hearing, though was not asked by the petitioner/Assessee, that become incumbent on the part of the petitioner/Assessee to seek such a chance of personal hearing, in view of the peculiar facts of the case, where, the petitioner has been placed to explain with the documents already submitted to the revenue people to establish that the transactions under which, the petitioner/Assessee accepted that sum from a lender was a genuine transaction taken through the bank.

25. When this aspect has been projected, this Court feel that, such a chance can be given to the petitioner/Assessee, otherwise even if appeal is field against the assessment order, if this point is once again raised before the appellate authority, the appellate authority also has to necessarily consider the same and in that case, the entire assessment process, which culminated in the impugned order, would get further delayed. Therefore, instead of relegating the Assessee to approach the appellate authority to raise the same point of getting a personal hearing from the revenue, this Court feel that, since the chance of getting a personal hearing is part and parcel of the principles of natural justice, therefore, it comes within the domain of the writ jurisdiction, and on that ground, this Court feel that this writ petition can be entertained, and accordingly, it is disposed of with the following orders:

> "that the impugned order for the aforesaid reasons and discussions hereinabove made, is hereby set aside, and the matter is remitted back to the respondent Assessing Authority for reconsideration. While, reconsidering the same, the respondent revenue shall give one day personal hearing to the petitioner/Assessee, which shall be between 1st of October and 8th of October. Within these days, in any working day, such a personal hearing for one day can be given to the petitioner, for which advance notice shall be given by the respondent to the petitioner/Assessee, and on receipt of the same, the petitioner/Assessee, without fail, shall appear on the date so fixed for personal hearing and produce all documents, if not anything already produced and try to explain, to the satisfaction of the revenue, the case of the Assessee."

26. It is made clear that except the one day personal hearing, no further personal hearing shall be sought for by the petitioner/Assessee and, if any such request is made, the same need not be considered by the revenue.

27. After giving such an opportunity of personal hearing as indicated above for one day, it is open to the revenue to proceed to pass a fresh order of assessment, in accordance with law and on merits.

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

Sd/-

Assistant Registrar(P & A)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

PJL

To

1. The Additional/Joint/Deputy/Assistant Commissioner
   of Income Tax/Income Tax Officer,
   Income Tax Department,
   National Faceless Assessment Centre,
   Delhi

2. The Income Tax Officer,
   Ward - 3, Income Tax Department,
   Madura Coats Compound, Railway Feeder Road,
   Virudhunagar,
   Tamil Nadu - 626 001.

+1 CC to M/s.K.GOVINDARAJAN, Advocate (SR-29300[F] dated 16/09/2021

+1 CC to M/s.S.SRIMATHY, Advocate (SR-29287[F] dated 16/09/2021)

Order made in
W.P.(MD)No.16695 of 2021
Dated:
16.09.2021

TR/SKN(23.09.2021) 8P 5C