IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.04.2022

CORAM :

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

Writ Petition No.9437 of 2022
and
W.M.P.Nos.9180 & 9181 of 2022

The Bhavani Kudal Co-operative
Urban Bank Limited, Represented by its
General Manager Mr.S.Yadheedran
Post Box No.30/215, Main Road
Bhavani, Erode – 638 301. ... Petitioner

-Vs-

1. The Income Tax Officer
   National Faceless Assessment Centre
   Income Tax Department
   Ministry of Finance
   Room No.401, 2nd Floor, E-Ramp
   Jawaharlal Stadium, Delhi-110 003.

2. The Assistant Commissioner of Income Tax
   Circle-2, Erode Income Tax Office
   No.15, Gandhiji Road, Erode-638 001.

... Respondents

Prayer : Writ Petition under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari calling for the records in DIN ITBA/AST/144/2021-22/1042387325(1) dated 31.03.2022 on the file of the 1st respondent relating to the A.Y.2017-18 and quash the same.

For Petitioner : Mr.G.Baskar

For Respondents : Mr.A.N.R.Jayapratap
Junior Standing Counsel

O R D E R

The prayer sought for herein is for a Writ of Certiorari calling for the records in DIN ITBA/AST/144/2021-22/1042387325 (1) dated 31.03.2022 on the file of the 1st respondent relating to the A.Y.2017-18 and quash the same.

2. The petitioner is an assessee under the respondent under the Income Tax Act 1961 (In short 'the Act'). The assessment order has been passed for assessment year 2017-18 by order dated 24.12.2019. The said order was under challenge before this Court in W.P.No.300 of 2020 on various grounds.

3. After hearing the said writ petition, a learned Judge of this Court by order dated 09.01.2020 has allowed the writ petition and remitted the matter back to the assessing authority for reconsideration with the following directions.

> " 14. In the light of the above discussion, the impugned order dated 24.12.2019 passed by the respondent is hereby set aside and the case is remitted back to the respondent to pass a fresh speaking order within thirty days from the date of receipt of a copy of this order. The respondent shall fix a personal hearing for the said proceedings before passing orders. While passing fresh orders, the respondent shall take into consideration the reply and the documents filed by the petitioner on 24.12.2019. It is also made clear no extension of time will be entertained by the respondent.
>
> 15. The writ petition is allowed by way of remand. No costs. Consequently, connected miscellaneous petitions are closed."

4. Though such an earlier order was passed, where one month time was given to the Revenue by giving an opportunity of being heard to the petitioner by taking into account the reply and documents filed by the petitioner assessee, admittedly the Revenue could not act upon immediately and they initiated the proceedings only on 17.12.2021 and the petitioner assessee was asked to submit the details by a notice dated 25.03.2022 under Section 142(1) of the Act. In the said notice dated 25.03.2022 also, only 48 hours upto 10.00 A.M., on 27.03.2022 was the time given to reply.

5. Using the shortest possible time given, the petitioner assessee had replied on 26.03.2022 through the E-portal, but even that has not been taken into account. Once again a notice dated 31.03.2022 was issued by generating the same through the web portal on 31.03.2022 at 1838 Hrs, but on the same day within two hours the impugned assessment order has been passed ie., on 31.03.2022. Therefore, challenging the same the present writ petition has been filed.

6. Reiterating the aforesaid, the learned counsel for the petitioner would contend that, first of all the remand order passed by this Court in the year 2020 ie., on 09.01.2020 has not been followed within one month, no notice was given and now the proceedings was concluded without even considering the reply and documents from the petitioner as directed by this Court.

7. Admittedly, after a long time it was once again initiated on 17.12.2021 and notice was issued under Section 142(1) on 25.03.2022 giving less than 48 hours. Using the shortest period, reply was given by the petitioner, even that was not considered. Again another notice was issued on 31.03.2022, but not served on the petitioner because on 31.03.2022 at 1838 Hrs only the notice itself was generated and on the very same day within two hours or so the impugned assessment order dated 31.03.2022 has been passed. Therefore, it is clear violation of principles of natural justice, he contended.

8. Heard Mr.A.N.R.Jayapratap learned Junior Standing Counsel who would submit that, due to the work pressure immediately the reassessment process could not be made by the Revenue despite the remand order passed by this Court on 09.01.2020. Since the notice given to the petitioner on 25.03.2022 has not been properly responded and no documents have been filed by the petitioner assessee, the Revenue having no other option, proceeded further to pass the assessment order dated 31.03.2022. In this regard, the further notice dated 31.03.2022 may be ignored, as notice dated 25.03.2022 admittedly has been served on the petitioner or he has received the same through e-governance and therefore, the impugned order has to be sustained, he contended.

9. I have considered the rival submissions of the learned counsel appearing for either side and have perused the materials placed on record.

10. As has been rightly pointed out by the learned counsel for the petitioner, the earlier assessment order having been set aside the matter was remitted back by the order of this Court dated 09.01.2020, where the learned Judge has given only one month time to complete the assessment and pass orders after giving an opportunity of being heard to the petitioner assessee.

11. No such attempt seems to have been made by the Revenue as admittedly the initiation was made only on 17.12.2021 and notice was given on 25.03.2022 where less than 48 hours was given to reply. Though reply was given in this regard on 26.03.2022, the same has not been considered by the Revenue and they proceeded to issue another notice on 31.03.2022 and within two hours or so of the said notice, they proceeded to pass the

impugned assessment order on 31.03.2022 ie., on the same day.

12. All these documents would go to show that the orders passed by this Court on 09.01.2020 has not been followed or complied with, nor an opportunity of being heard also has been given to the petitioner and the notice was issued at the last minute giving less than 48 hours time. Therefore, these documents clearly demonstrate that the principles of natural justice have been violated in this case and hence this Court has no hesitation to hold that the impugned assessment order is liable to be set aside.

13. In the result, this writ petition is disposed of with the following order.

- The impugned order dated 31.03.2022 is set aside and the matter is remanded back to the respondents for re-consideration.

- While reconsidering the same, the Revenue shall give proper opportunity to the petitioner assessee, by giving a fresh notice, which includes a personal hearing, by fixing a date for the same.

- On receipt of such notice, the petitioner assessee shall provide all the details including documents, if any, to the show cause notice and also appear before the assessing officer on the date to be given by way of personal hearing and the assessment order shall be passed within a period of 30 days after the personal hearing date.

- It is made clear that at least this time the Revenue shall strictly follow the time frame fixed by this Court.

14. With the above directions, this writ petition is disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS-IX)

//True Copy//

Sub Assistant Registrar

KST

To

1. The Income Tax Officer
   National Faceless Assessment Centre
   Income Tax Department
   Ministry of Finance
   Room No.401, 2nd Floor, E-Ramp
   Jawaharlal Stadium, Delhi-110 003.

2. The Assistant Commissioner of Income Tax
   Circle-2, Erode Income Tax Office
   No.15, Gandhiji Road, Erode-638 001.

+1cc to Mr.G.Baskar, Advocate, S.R.No.26304

+1cc to Mr.A.P.Srinivas, Advocate, S.R.No.26622

W.P.No. 9437 of 2022

VG-II(CO)
UMA(12/07/2022)