IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.04.2022

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THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

W.P.No.10776 of 2022
and
W.M.P.Nos.10414 & 10416 of 2022

Shri M.Ravindran ... Petitioner

Vs

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

2.Assistant Commissioner of Income-Tax,
Non-Corporate Circle -10(1),
121, Nungambakkam High Road,
Nungambakkam,
Chennai – 600 034.

3.Principal Commissioner of Income Tax,
Chennai – 3, 121, Nungambakkam High Road,
Nungambakkam, Chennai – 600 034. ...
Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorari, to call for the records on the file of the Respondents and quash

(a) the impugned order No.1 in PAN AAFPR4625M, DIN:ITBA/AST/S/147/2021-22/1041943722(1) dated 29/03/2022 passed by 1st Respondent under section 147 read with section 144 B of the Income tax Act, 1961 ("ACT") for the Assessment Year (AY) 2014- 15,

(b) the Impugned order No.2 disposing off the objections raised by the petitioner to the reasons for reopening in PAN:AAFPR4625M, DIN:ITBA/AST/ F/17/ 2021-22/1041618247(1) dated 26.03.2022 for the AY 2014- 15 passed by 1st Respondent and

(c) the Impugned Notice u/s. 148 of the act issued by the 2nd respondent in PAN AAFPR4625M, DIN:ITBA/AST/S/148/2020-21/1032049607(1) dated 31.03.2021 for reopening of the assessment for AY 2014-15.

For Petitioner : Mr.N.V.Balaji

For Respondents : Mr.D.Prabhu Mukunth Arunkumar
Junior Standing Counsel

ORDER

The prayer sought for herein is for a Writ of Certiorari, to call for the records on the file of the Respondents and quash

(a) the impugned order No.1 in PAN AAFPR4625M, DIN:ITBA/AST/S/147/2021-22/1041943722(1) dated 29/03/2022 passed by 1st Respondent under section 147 read with section 144 B of the Income tax Act, 1961 ("ACT") for the Assessment Year (AY) 2014- 15,

(b) the Impugned order No.2 disposing off the objections raised by the petitioner to the reasons for reopening in PAN:AAFPR4625M, DIN:ITBA/AST/ F/17/ 2021-22/1041618247(1) dated 26.03.2022 for the AY 2014- 15 passed by 1st Respondent and

(c) the Impugned Notice u/s. 148 of the Act issued by the 2nd respondent in PAN AAFPR4625M, DIN:ITBA/AST/S/148/2020-21/1032049607(1) dated 31.03.2021 for reopening of the assessment for AY 2014-15.

2. For the Assessment Year 2014-15, the Revenue wanted to reopen the assessment under Section 147 of the Income Tax Act, 1961 [in short, 'the Act']. Therefore, notice under Section 148 of the Act was issued on 31.03.2021. In response to the same, return was filed by the petitioner/assessee on 28.04.2021. Thereafter, though specific reasons for re-opening was not asked by the petitioner/assessee, it was provided to him on 19.07.2021 and thereafter, once again on 19.01.2022.

3. Treating the reasons given on 19.01.2022 as the reasons for reopening, the petitioner had chosen to give objections on 25.01.2022. The said objections given by the petitioner were considered and rejected by the order of the Revenue dated 26.03.2022. On the same date i.e., on 26.03.2022, the Revenue also issued Show Cause notice, giving time upto 27.03.2022 at 23:59 hours to respond.

4. Within the 24 hours, since the petitioner could not respond, on 29.03.2022, orders of assessment passed, which is impugned herein.

5. Assailing the said orders, Mr.N.V.Balaji, learned counsel for the petitioner submits that, even though he has filed objection to the reasons on 25.01.2022, the same was rejected only on 26.03.2022 and on the same day, show cause notice also was issued with regard to the proposed assessment, giving only 24 hours time to respond, within which, it could not be responded, because it fell on Sunday and in the meanwhile, on 29.03.2022, orders of assessment has been passed. Therefore, this case can be treated as a case, where, no proper opportunity was given to the petitioner/assessee. Hence, it is violative of the principles of natural

justice. On that ground, the petitioner/assessee seeks indulgence of this Court against the impugned order.

6. Heard Mr.D.Prabhu Mukunth Arunkumar, learned Junior Standing Counsel appearing for the Revenue, who would submit that, the reasons have already been disclosed on 19.07.2021 voluntarily by the Revenue as the same was not asked by the petitioner/assessee, at any point of time, even according to the procedure contemplated in ***GKN Driveshafts (India) Ltd Vs. Income Tax Officer and others*** dated ***25.11.2002 reported in [2003] 259 ITR 19 (SC).*** Nevertheless reply was given or objection was made only on 25.01.2022, which was disposed on 26.03.2022. Therefore, no blame can be made against Revenue. When Show cause notice dated 26.03.2022 could have been issued only after rejecting the objection since the last date i.e., 31.03.2021 as per limitation was fast approaching, the Revenue had no other option, except to give short duration of one day to respond. Within the said one day since there is no response from the petitioner/assessee, the Revenue proceeded to pass the order of assessment dated 29.03.2022. Therefore, the learned Junior Standing Counsel for the Revenue would contend that, the

impugned order does not suffer with any procedural infirmity, including the alleged violation of principles of natural justice.

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

8. As has been rightly pointed out by the learned Junior Standing counsel appearing for the Revenue that, reasons were disclosed on 19.07.2021, though it was stated by the learned counsel for the petitioner only on 19.01.2022, reasons were given, the fact remains that, on 19.07.2021 itself, reasons were given. Therefore, belatedly, the objection was given only on 25.01.2022.

9. That apart, it is to be noted that, as per the ***GKN Driveshafts (cited supra)*** procedure, no reason was sought for by the petitioner voluntarily. Therefore, it cannot be blamed that, the Revenue has belatedly given the reason and thereafter, belatedly, disposed the objections. Hence, challenge made against the rejection order of objection

dated 26.03.2022, in the considered opinion of this Court cannot be countenanced. Therefore, challenge made against the order under Section 148 of the Act as well as the rejection order dated 26.03.2022 fails. Hence, on that ground, writ petition is to be rejected.

10. Insofar as the assessment order dated 29.03.2022, prior to which, show cause notice was issued on 26.03.2022, giving 24 hours time to respond. Within only 24 hours time and that too, falls on Sunday, it might not have been possible for any assessee to respond quickly. Therefore, this Court feels that, to comply with the principles of natural justice, one more chance of atleast two weeks may be given to the petitioner/assessee to respond to the show cause notice dated 26.03.2022 and thereafter, a fresh assessment order can be passed by the Revenue.

11. In that view of the matter, this writ petition is disposed of with the following orders:

(i) That the impugned order insofar as the assessment order dated 29.03.2022 alone is set aside and the matter is remitted back to the respondent for reconsideration. The other challenge made against Section 148 notice dated 31.03.2021 and the rejection of objection dated 26.03.2022 are to be sustained and challenge made against these orders fails and therefore, these orders are to be sustained. Accordingly, sustained.

(ii) During the reconsideration process, the petitioner shall treat the show cause notice dated 26.03.2022 as a fresh show cause notice, as no further show cause notice would be issued by the Revenue. It is open to the petitioner to respond to the said show cause notice within two weeks time from the date of receipt of a copy of this order. In this regard, if at all any personal hearing is asked for by way of video-conferencing, the same shall also be provided by the Revenue and thereafter, orders of assessment can be passed by the Revenue in accordance with law.

12. With these directions, this writ petition stands disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

27.04.2022

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Index : Yes / No
Speaking order : Yes / No

To

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

2.Assistant Commissioner of Income-Tax, Non-Corporate Circle -10(1), 121, Nungambakkam High Road, Nungambakkam, Chennai – 600 034.

3.Principal Commissioner of Income Tax, Chennai – 3, 121, Nungambakkam High Road, Nungambakkam, Chennai – 600 034.

R. SURESH KUMAR, J.

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