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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 12.10.2022

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THE HONOURABLE MR. JUSTICE MOHAMMED SHAFFIQ

W.P.(MD).No.2143 of 2022
and
W.M.P.(MD).Nos.1862 and 1863 of 2022

Sri Thomas Xavier ... Petitioner

Vs.

1.The Assistant Commissioner of Income Tax,
Central Circle – 2,
Income Tax Staff Quarters Complex,
Kulamangalam Road,
Mennambalpuram,
Madurai – 2.

2.The Joint Commissioner of Income Tax,
Central Range,
Income Tax Staff Quarters Complex,
Kulamangalam Road,
Mennambalpuram,
Madurai – 2. ...Respondents

<u>Prayer</u> : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, calling for the records in PAN / GIR No. ACNPT6025F dated 30.12.2021 on the file of the 1st Respondent relating to A.Y. 2018-19 and quash the same.

For Petitioner : Mr.G.Baskar

For Respondents : Mr.N.Dilip Kumar,
Senior Standing Counsel.

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ORDER

This Writ Petition is filed challenging the order dated 30.12.2021 for the assessment year 2018-19 on the premise that the assessments have been made without even providing the petitioner, the material which was sought to be relied upon in completing the assessment and that the Assessing Officer has proceeded to complete the assessment in undue haste thereby denying the petitioner a reasonable opportunity.

2. It is submitted by the learned counsel for the petitioner that the petitioner filed its returns for the assessment year 2018-19 on 31.08.2018 declaring total income of Rs.2,45,62,120/-. There was a search and seizure operation under Section 132 of the Income Tax Act on M/s.Janatha Fish Meal and Oil Products of Janatha Group at Kota, Udupi District on 08.02.2018. Allegedly, during the course of search, incriminating materials were seized containing the details of payments made towards purchase of Fish Meal Plant at Nagercoil from the petitioner. Pursuant thereto, the assessments were centralized vide Notification No.11/2020-21 dated 03.12.2020, which was communicated to the petitioner vide Notice dated 09.12.2020. In the meanwhile, the petitioner was issued with notice under Section 148A of the Act, dated 04.10.2021, observing that shares in M/s.Lax Bio Feeds Private

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Limited was sold to the promoters of oil products and the petitioner has received cash for the same. However, the notice under Section 148 A of the Act has not been proceeded with thereafter.

3. It is further submitted that the petitioner was issued with notices under Section 153C of the Act dated 08.12.2021. It may be relevant to note that this is pursuant to the inspection carried out under Section 132 of the Act on 08.02.2018 and the notices required the petitioner to file return of income for the assessment year 2018-19 within four days from the service of notice. Yet another notice came to be issued under Section 142(1) of the Act dated 13.12.2021 calling upon the petitioner to furnish a copy of return of income filed in response to the notice under Section 153 C of the Act dated 08.12.2021, on or before 16.12.2021. The petitioner in response to the notice under Section 142(1) of the Act requested the respondents to provide materials allegedly belonging to the petitioner along with satisfaction recorded before proceedings under Section 153 C of the Act, vide his letter dated 16.12.2021. The 1st Respondent issued notice under Section 142(1) of the Act dated 21.12.2021, requiring the petitioner to furnish the following details on or before 23.12.2021, which was received by the petitioner only on 23.12.2021. The details sought for are as under:

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a)Computation of Income Statement, Balance Sheet and P & L Account of Annai Therse Body Building along with schedules

b)Copy of all Bank Pass Books/Account Statement (including loan accounts)

c) Details of sale of shares

d) Details of concerns in which the petitioner is interested/associated.

4. The 1st Respondent proceeded to issue notice under Section 143(2) of the Act dated 22.12.2021 fixing the hearing on 24.12.2021 and thereafter, issued notice under Section 142(1) of the Act dated 24.12.2021, requiring the petitioner to furnish relevant details on or before 27.12.2021. The petitioner requested for an adjournment vide his letter dated 23.12.2021, inasmuch as the Chartered Accountant was finalizing returns for his clients while also reminding his request to be furnished with copies of material allegedly belonging to the petitioner and which was sought to be relied upon. On 24.12.2021, the petitioner provided the details called for in terms of the Notice under Section 142(1) of the Act dated 21.12.2021. On 24.12.2021, a show cause notice was once again issued to the petitioner requiring the petitioner to submit his reply before 28.12.2021, to which the petitioner responded on 27.12.2021, wherein, details of the sale of 18500 shares in M/s.Lax Bio Feeds Private Limited made by the petitioner to various persons was set out. It was

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further submitted that for the sale of 18500 shares in M/s.Lax Bio Feeds Private Limited, the petitioner had received a total consideration of Rs.2,58,20,750/-, of which, Rs.33,20,750/- was received through Bank while the remaining balance was received in cash. On receipt of the same, the 1st Respondent proceeded to complete the assessment under Section 143(3) read with Section 153C of the Income Tax Act, 1961.

5. It is submitted by the learned counsel for the petitioner that the impugned order of assessment has been passed completely overlooking the request of the petitioner to furnish the copies of materials, which are sought to be relied upon. It is also submitted by the learned counsel for the petitioner that while the search was made on 08.02.2018, the proceedings were centralized on 03.12.2020, which was informed on 09.12.2020. It is submitted that in terms of the proviso to Section 153B, the period of limitation for making the assessment/reassessment shall be the period as referred to in clause (a) or clause (b) of this sub-section or nine months from the end of the financial year in which books of account or documents or assets seized or requisitioned are handed over under Section 153C to the Assessing Officer having jurisdiction over such other person, whichever is later. The petitioner was not provided with a reasonable opportunity to put forth his case resulting in denial of

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principles of natural justice. It is further submitted that any proceeding which is carried out in haste would tend to arbitrariness and thereby falling foul of Article 14 of Constitution of India.

6. To the contrary, it is submitted by the learned counsel for the Respondents that the petitioner was issued with notices on various dates commencing from 08.12.2021 and thereafter, on 24.12.2021 and therefore, the plea of violation of principles of natural justice may not be justified.

7. On hearing both sides, this Court is of the view that the impugned orders of assessment does suffer from violation of principles of natural justice inasmuch as the petitioner, despite having made a request for being furnished with copies of materials which are sought to be relied upon while framing the assessment, has not been furnished with the same. It is necessary that the assessee ought to have been furnished with copies of materials which is sought to be relied upon against him in framing assessments for unless the same is complied with, the assessee may not be in a position to respond to the allegations against him.

Secondly, this Court finds that there is merit in the submission of the learned counsel for the petitioner that the entire assessment under Section 153C

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of the Act has been done in undue haste within a span of two weeks commencing with a notice dated 08.12.2021. Any proceeding made in haste tends to arbitrariness and cannot be justified. In this regard, it may be relevant to refer to the judgment of the Supreme Court in the case of ***Zenit Mataplast (P) Ltd. v. State of Maharashtra, (2009) 10 SCC 388,*** which reads as under**:**

> *"39. Anything done in undue haste can also be termed as arbitrary and cannot be condoned in law (vide M.P. Hasta Shilpa Vikas Nigam Ltd. v. Devendra Kumar Jain [(1995) 1 SCC 638 : 1995 SCC (L&S) 364 : (1995) 29 ATC 159] and Bahadursinh Lakhubhai Gohil v. Jagdishbhai M. Kamalia [(2004) 2 SCC 65 : AIR 2004 SC 1159]).*
>
> *40. If the instant case is considered, in the light of the above settled legal propositions and admittedly the whole case of the appellant is based on violation of Article 14 of the Constitution as according to the appellant it has been a case of violation of equality clause enshrined in Article 14, the facts mentioned hereinabove clearly establish that the Corporation and the Government proceeded in haste while considering the application of Respondent 4 which tantamounts to arbitrariness, thus violative of the mandate of Article 14 of the Constitution."*

Reliance was sought to be placed on the order of the learned Single Judge of this Court in the case of ***B.Kubendran Vs. Deputy Commissioner of Income Tax, Central Circle 2(1), Chennai*** in W.P.Nos.3023 of 2020 and batch etc., wherein, it was held as under:

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"31. The impugned order has come to be passed on 30.12.2019 without further reference to the petitioner. In this case as well, I am of the view that the assessments have certainly been completed in haste. When the search has been completed on 07.04.2017, there was no necessity to have waited till 20.09.2019 for centralization, and issue notices under Section 153C only on 25.10.2019. Any delay on the part of the petitioner in responding to the notices appears insignificant in the face of the enormous delay by the Income Tax Department in taking stock of the search material, centralizing the cases and issuing the notices in time, particularly, since it is their case that the assessment get time barred on 31.12.2020.

32. The petitioner has, for AY 2015-16 and AY 2016-17, specifically sought more time to make his submissions on the merits of the matter, relating to alleged undisclosed income from quarrying operations and seigniorage fee. The respondent officer has, in making additions as aforesaid, simply ignored this request.

.......35. There is no explanation set forth in counter or at the time of hearing to explain why the assessment had been taken up for completion, at the very fag end of limitation and for this reason, I believe I would have been justified, had I annulled the assessments, as a second innings is not to be granted to the department, merely as a matter of rote.

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However, and solely as a matter of prudence, I set aside the assessments with a direction to the respondent to issue notices afresh, hear the petitioner and pass orders of assessments within a period of eight (8) weeks from today, with sufficient time being given to the petitioner to putforth his submissions on merits."

(emphasis supplied)

8. Following the order of this Court in W.P.Nos.3023 of 2020 and batch etc., the impugned order is set aside with a direction to the Respondents to issue notices afresh and to furnish the petitioner, the material which is sought to be relied upon and pass orders of assessment on merits and in accordance with law, after affording a reasonable opportunity to the petitioner within a period of eight (8) weeks from the date of receipt of a copy of this order.

9. This Writ Petition is disposed of. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

12.10.2022

Index : Yes / No
Internet : Yes/ No
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