



W.P(MD).Nos.15187 and 15188 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 28.07.2022

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THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

W.P(MD).Nos.15187 and 15188 of 2022
and
W.M.P(MD).Nos.10877, 10879, 10882, 10885,
10878, 10880, 10887 and 10888 of 2022

W.P(MD)No.15187 of 2022

Subramaniam Shanmuganathan

... Petitioner

Vs.

- 1.The Deputy Commissioner of Income Tax,
National e-Assessment Centre, Delhi,
E-Ramp, Jawaharlal Nehru Stadium,
Delhi-110 003.
- 2.The Deputy Commissioner of Income Tax
Circle 2(1), Trichy
Income Tax Department,
Thanjavur-613 006.
- 3.The Principal Commissioner of Income Tax-1,
Madurai,
Income Tax Department,
Madurai, Tamil Nadu-625 002.

...Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, to call for the records of the writ petitioner on the file of the first respondent to quash the impugned order, dated 30.03.2022 passed under Section 263 r.w.s 144 and



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144B of the Act for the Assessment Year 2012-13 in ITBA / AST / S / 144 / 2021-22 / 1042099472(1) and consequently direct the first respondent to complete the fresh re-assessment for the assessment year 2012-13 after granting reasonable/sufficient opportunity of hearing.

For Petitioner : Mr.A.S.Sriraman
For Respondents : Mr.N.Dilip Kumar
Standing Counsel

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complete the fresh re-assessment for the assessment year 2013-14 after granting reasonable/sufficient opportunity of hearing.

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For Petitioner : Mr.A.S.Sriraman
For Respondents : Mr.N.Dilip Kumar
Standing Counsel

COMMON ORDER

The petitioner, who is an assessee posted with an assessment orders, dated 30.03.2022 and 29.03.2022 for the assessment year 2012-2013 and 2013-2014. These orders are in gross violation of principles of natural justice, challenged the same. The petitioner filed his return of income for the assessment year 2012-2013 and 2013-2014 under consideration on 01.12.2013 and 13.06.2016 by reporting the taxable total income at Rs. 25,91,970/- and Rs.13,87,910/- respectively. The said assessment was re-opened vide issuance of notice under Section 148 of the IT Act, dated 16.02.2017 and 13.01.2017. The petitioner filed response to the notice under Section 148 of the IT Act on 20.07.2017 electronically.

2. During the course of the original re-assessment proceedings, the petitioner submitted replies and documents on various dates. Thereafter, re-assessment under Section 147 read with Section 143 (3) of the Act was framed on 12.09.2017 accepting the return of income. The third respondent



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assumed jurisdiction for revisional proceedings by way of issuing a show cause notice under Section 263 of the Act, dated 17.02.2021 and 02.03.2021 respectively.

3. The petitioner filed his objections vide letter, dated 01.03.2021 and 12.03.2021 to the third respondent. Consequently, the order under Section 263 of the IT Act passed vide order dated, 12.03.2021 and 22.03.2021. The revision order under Section 263 of the IT Act is now subject matter of appeal before the Income Tax Appellate Tribunal in ITA Nos.314 and 315 of 2022, pending adjudication. This being so, petitioner received a notice under Section 142 (1) of the IT Act, dated 14.02.2022 electronically through ITBA portal calling for details as per annexure and the same was followed by issuance of another notice under Section 142 (1) of the IT Act, dated 15.03.2022 calling for details as per earlier notice on or before 19.03.2022.

4. The show cause notice under Section 144 of the IT Act, dated 19.03.2022 issued for completing the assessment on the basis of the materials available on record. The show cause notice along with draft assessment order issued on 27.03.2022 and 25.03.2022 through the ITBA portal seeking response on or before 28.03.2022 by 23.59 hours. The first respondent completed the assessment on 30.03.2022 and 29.03.2022 ex-parte without



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affording, effective opportunity of hearing the petitioner. The petitioner already filed an appeal before the appellate tribunal challenging the determination of taxable total income of Rs.9,91,17,260/- and Rs. 10,81,55,110/- for the assessment year 2012-2013 and 2013-2014. Thus, without giving reasonable opportunity to the petitioner to submit his reply, is not proper. The respondents failed to follow the procedure envisaged under Section 144 B of the IT Act and passed the impugned order.

5. Further, the Commissioner already invoked revision under Section 263 of the IT Act, re-assessing the assessment order, calculating the income in variations to the petitioner's contention. The Assessment Officer to await the order of the Commissioner's order which is under challenge. Further, the petitioner relied on the decision of the Apex Court reported in **176 ITR 169**, stressed on the following observations:

“In exercise of our power of judicial review of the decision of the Settlement Commission we are concerned with the legality of procedure followed and not with the validity of the order. See the observations of Lord Hailsham in Chief Constable of the North Wales Police Vs.Evans (1982) 1 WLR 1155. Judicial review is concerned not with the decision but with the decision making process.”

6. The petitioner further produced the order passed by this Court in W.P(MD)Nos.7444 of 2022 and 11605 of 2021, wherein, this Court finding



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that giving one or two days time to file a reply and objections of the petitioner is totally inadequate and set aside the order.

7. The learned Standing Counsel for the respondents submits that the petitioner filed his income tax returns for the assessment year 2012-2013 and 2013-2014. Thereafter, the assessment was completed under Section 143 (3) read with Section 147 of the IT Act on 12.09.2017. The Principal Commissioner invoking Section 263 of the IT Act has passed orders. During the course of proceedings under Section 263 of the IT Act, Principal Commissioner of Income Tax Department issued notice to the assessee, the petitioner replied stating that assets and liabilities wrongly fixed by the previous Income Tax practitioners and hence the capital arrived at by him is also not correct. Subsequently, the same was corrected by filing revised return.

8. The order of the Assessing Officer was found to be erroneous and prejudicial to the interest of the revenue, the Principal Commissioner of Income Tax by exercising power under Section 263 of the IT Act, passed an order on 02.03.2021 and 22.03.2021 and set aside the order passed by the Assessing Officer with the direction that the Assessing Officer to frame the assessment order afresh after making necessary enquiries and verification



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especially with regard to the assessee purchased a property at T.Nagar, Chennai along with his wife for Rs.5.20 crores against the documented value of Rs.1.20 crores. On enquiries made with the seller of the property Shri.P.Seeman accepted that he received an amount of Rs.4.40 crores by way of cash from the assessee and his wife for the above said transfer of property. The assessee failed to furnish any details, explanation and documentary evidence to substantiate the sources of fund of Rs.4.40 crores paid to seller. In absence of any details, explanation and documentary evidence due to which the nature and sources of cash funds amounting to Rs.4,40,00,000/- for amount paid to seller for investment in property remained unexplained.

9. The details with regard to sundry creditors and sundry debtors to be verified. The case was transferred to the Faceless Assessment Centre. Accordingly, notice dated 15.03.2022 under Section 142 of the IT Act was issued. He further submitted that show cause notice under Section 144 of the IT Act, dated 19.03.2022 issued to the assessee to submit his reply on or before 21.03.2022. The assessee neither furnished any details nor submitted any documents. Thereafter, draft assessment order issued to the petitioner on 25.03.2022 for the assessment year 2013-2014 and 27.03.2022 for the assessment year 2012-2013. Thereafter, final order passed on 29.03.2022 and 30.03.2022 respectively. Further submitted that the petitioner having received



the show cause notice, not responded to the same. In the show cause notice, dated 27.03.2022 and 25.03.2022, in paragraph 3C what is required to be followed, stated which is as follows:

“3C. If required, after filing written reply you may request for personal hearing so as to make oral submissions or present your case. The request can only be made by clicking the seek video conferencing button available against the SCN, in the view notices of this proceeding in the e-proceedings tab on efiling portal. The request can be made only before expiry of compliance date and time. On approval of request, personal hearing shall be conducted exclusively through video conference.”

10. The assessee failed to utilise the opportunity given and now claims that principles of natural justice not followed. He further submitted that the appeal pending challenging the order in ITA.No.314 and 315 of 2022 and he further submitted that the pendency of the above appeal challenging the order passed under Section 263 would not come in the way of passing the impugned order against the petitioner.

11. Considering the submission and perusal of the matter, it is seen that admittedly in this case, show cause notice issued on 27.03.2022 and 25.03.2022 giving the petitioner no time or little time to give his reply on or before 28.03.2022 by 23.59 hours, which does not comply sufficient and reasonable opportunity.



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12. In view of the same and as per the orders of this Court passed under similar circumstances in W.P(MD)Nos.7444 of 2022 and 11065 of 2021. This Court set aside the assessment order passed against the petitioner, dated 29.03.2022 for assessment year 2013-2014 and 30.03.2022 for assessment year 2012-2013. Now, the Assessing Officer is directed to take up the assessment from the stage of issuance of show cause notice giving opportunity to the petitioner to make his objections and to produce documents enable him to make his reply, to access to the portal and thereafter, following the procedure by giving personal hearing or video conferencing and thereafter to conclude the assessment. Since the petitioner only prays for a remand, the assessment is set aside and remanded to the file of concerned respondent. The petitioner is granted four weeks time from date of issuance of this order, to file his reply to the proposals contained in the show cause notice, as well as the points raised in the impugned order, that shall also be read as a show cause notice and nothing more. The petitioner shall be heard thereafter and an order passed by the Assessing Authority taking note of the submissions of the assessee both written and oral as well as any supportive documents filed.



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13. These writ petitions stand allowed with the above observations. No costs. Consequently, connected miscellaneous petitions are closed.

28.07.2022

Index : Yes / No
Internet : Yes/ No
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