BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 07.04.2022

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THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P(MD).No.19814 of 2021
and
W.M.P(MD).Nos.16502 and 16503 of 2021

Samuel ... Petitioner

Vs.

1.The Central Board of Direct Taxes,
Represented by its Chairperson,
Department of Revenue - Ministry of Finance,
Government of India,
New Delhi.

2.The Additional/Joint/Deputy/Assistant Commissioner,
of Income Tax/Income Tax Officer,
National e-Assessment Center,
Delhi.

3.The Income Tax Officer,
Ward-4,
Tirunelveli. ...Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, calling for the records on the file of the second respondent and quash the impugned order in ITBA/AST/S/144/2021-22/1035945220(1) dated 27.09.2021 passed under Section 144 read with Section 254 read with section 144B if the Income Tax Act, 1961 by the 2nd Respondent as illegal and consequently direct the third respondent to conduct the proceedings in accordance with the principles of natural justice.

For Petitioner : Mr.M.Veerabathran Prasanth
For Respondents : Mr.N.Dilipkumar
Senior Standing Counsel

ORDER

The petitioner has challenged the impugned assessment order dated 27.09.2021. The challenge to the impugned order is primarily on the ground that it is in violation of the principles of natural justice, as the petitioner was not heard before the impugned order was passed. The second ground on which the impugned order is challenged is on account of the fact that despite the petitioner requesting for cross-examination of the persons from whom a statement was obtained by the Income Tax Department, they were not allowed to be cross-examined. The petitioner had specifically requested for cross-examination of buyer also namely, V.Palanikumar, which was denied.

2. It is submitted that on an earlier occasion on 23.09.2021, the petitioner was called to furnish the PAN numbers of the respective parties and therefore, the petitioner should provide the PAN numbers of the persons to whom the petitioner wishes to cross-examine. It is submitted that the statements of the petitioner's brothers, sister and the buyer were obtained. However, none of the persons were allowed to be cross-examined and the impugned order has to go in the light of the decision of the Hon'ble Supreme Court in **Kishanchand Chellaram vs. CIT [1980 (125) ITR 713 (SC)]** and the decision of the Hon'ble Supreme Court followed in **Dy. CIT vs. Roger Enterprises (P.) Ltd., [2012 SCC Online ITAT 11821]** and in the case of **Briji Bhushan Singhal vs. ACIT [2018 SCC Online ITAT 2891].**

3. The learned counsel for the petitioner submits that the property in question was under litigation and that a total extent of 8.59 Acres of lands were transferred and the dispute pertains to 1.01 Acres of land and that no sale consideration was received by the petitioner from the buyer namely, V.Palanikumar. It is submitted that even though the petitioner's brothers and sister have stated that they have not received any consideration, the fact remains that the petitioner has also not received any consideration from the buyer V.Palanikumar, who offered to buy the property under litigation between the petitioner and Matheesa Pandian and Duraipandian, the two brothers and that the documents were presented for registration, but could not be completed for want of income tax clearance.

4.In this connection, a reference was made to the decision of this Court in Crl.O.P.(MD)Nos.1682 of 2012 and 11750 of 2013, dated 06.06.2018, in the cases filed under Section 482 of Cr.P.C. by one of the petitioner's buyer namely, V.Palanikumar and one Karuppasamy Pandian. That apart, the learned counsel for the petitioner has also placed reliance on the Circular, dated 06.09.2021, which was modified later on 22.09.2021, prior to the impugned order. It is submitted that as per the above Circular, the Range Head may compulsorily be involved in the finalization of assessment of such cases transferred to JAO, for which the provisions of Section 144-A of the Income Tax Act may suitably be invoked.

5.The learned counsel for the petitioner further submits that having invoked Section 144 of the Income Tax Act, it was mandatory on the part of the respondents to have given personal hearing to the petitioner, as under the scheme of the Act, any order passed in violation of principles of natural justice will be *non est* in law.

In this connection, a reference was made to sub-clause (9) to Section 144-B of the Income Tax Act.

6. In support of his submissions, the learned counsel for the petitioner relied on the following judgments:-

(i) Trendsutra Client Services (P.) Ltd. vs. Assistant Commissioner of Income Tax [2021 (132) taxmann.com 104 (Bombay)]

(ii) A decision of the Delhi High Court in Bharat Aluminium Company Ltd. vs. Union of India and others [W.P.(C)No.14528 of 2021 and CM APPL.No.45702 of 2021, dated 14.01.2022]

(iii) M/s.Arun Excello Foundations, Rep. by its Partner, Mr.P.Suresh vs. The Additional/Joint/Deputy Assistant Commissioner of Income Tax, Delhi [W.P.No.19552 of 2021, dated 01.02.2022]

(iv) Fifth Field Relators (P.) Ltd., vs. Assistant Commissioner of Income Tax, National e-Assessment Centre, Delhi [2022 (135) taxmann.com 76 (Madras)]

(v) C.V.Ravi vs. Income Tax Officer Business Ward-11(4), Chennai [2021 (124) taxmann.com 438 (Madras)]

(vi) Ponmani Suresh vs. Deputy Commissioner of Income Tax Non-Corporate Ward 2, Chennai [2020 (120) taxmann.com 207 (Madras)]

(vii) Vetrivel Minerals vs. Assistant Commissioner of Income Tax, Central Circle -2, Madurai [2021 (12) taxmann.com 126 (Madras)]

(viii) Karti P.Chidambaram vs. Additional Commissioner of Income Tax, Central Range – 2, Chennai [2021 (129) taxmann.com 36 (Madras)]

7. Opposing the prayer, the learned Senior Standing Counsel for the respondents submits that this is a second round of litigation by the petitioner.

8. The learned Senior Standing Counsel for the respondents submits that challenge to the impugned order is based on Central Board of Direct Taxes Circular/Instructions, dated 06.09.2021 in circular F.No. 187/3/2020-ITA-I as modified by an order in F.No.225/97/2021-ITA-II, dated 22.09.2021. It is not applicable to the facts of the case inasmuch as Paragraph iv (b) of circular, which is one of the exemption for faceless assessment under Section 144 B of the Act. It applies to a situation, where time limit for completion of assessment expires on 30.09.2021 pending with the jurisdictional Assessing Officer as on 11.09.2021 or thereafter, were cannot complete as per the procedure laid down under Section 144 B of the Act due to technical procedure constrains in the given period of limitation. It is therefore submitted that there is no error committed by the respondents while completing the assessment pursuant to the remand order, dated 08.08.2019 of the ITA in ITA No.288/CHNY/2019.

9. The learned Senior Standing Counsel for the respondents further submits that the respondents have not relied upon the statement of either the buyer, namely, V.Palanikumar or any of the

statements of the petitioner's siblings. On the other hand, it is submitted that it is the specific case of the petitioner that the buyer failed to pay the amount and therefore question of the petitioner having paid any amount to the sibling also does not arise. Therefore, the request for cross-examine the sibling was also a request only to delay the completion of the assessment in respect of assessment year 2007-2008, which had remained inconclusive after the orders were set aside by the Tribunal. As far as the cross-examination of the buyer is concerned, it is submitted that the department has not relied on the statement of the buyer.

10. On the other hand, the department has relied upon the statement contained only in the sale deed, dated 26.02.2007. The learned Senior Standing Counsel for the respondents further submits that though the provisions of the India Evidences Act, 1872 is not applicable, nevertheless, there cannot be any evidence on the content of documents as the documents speak for themselves. It is therefore submitted that merely because the petitioner now turns around and states that the petitioner has not received any instructions and therefore, the question of invoking Section 50 C of the Income Tax Act, would not apply cannot be countenanced. The learned senior standing counsel for the respondents submits that the petitioner has been given enough latitude and therefore, the impugned order deserves to be upheld. It is submitted that no procedural irregularity has been pointed out or committed by the respondents while passing the impugned order.

11. The learned senior standing counsel for the respondents submits that the review under Article 226 of the Constitution of India is confined to only decision making process and it is submitted that there is no procedural infraction as far as the completion of assessment order is concerned and therefore, the writ petition is liable to be dismissed.

12. By way of rejoinder, the learned counsel for the petitioner submits that the impugned order has to go as there is a violation of principles of natural justice and no opportunity of personal hearing was granted to the petitioner. The learned counsel for the petitioner submits that the impugned order relied on the statement of the petitioner's siblings and therefore, the petitioner was entitled to cross-examine them. It is further submitted that the value under Section 50 C (2) in question there has to be proper determination of the value for the purpose of computation of income.

13. I have considered the arguments advanced by the learned counsel for the petitioner and the learned counsel for the respondents.

14. Earlier, the petitioner suffered an assessment order, dated 30.12.2010. Aggrieved by the same, the petitioner had preferred an appeal before the Commissioner of Income Tax Appeals in I.T.A.No.160/2010-11, which came to be dismissed by the Appellate

Tribunal by an order, dated 27.08.2014. The petitioner failed to participate in the proceedings before the Commissioner of Income Tax Appeals despite having filed the appeal. It is in this back ground, the Appellate Tribunal granted a fresh opportunity to the petitioner by setting aside the order and remitted the case back to the Assessing Officer to pass a fresh order by its order, dated 08.08.2019 in I.T.A No.288/CHNY/2019.

15. The petitioner in this case had not filed a return under Section 139 of the Income Tax Act in time. Under these circumstances, the petitioner was issued with a notice under Section 148 of the Income Tax Act, which culminated in an assessment order, dated 30.12.2010. The said assessment order was passed under Section 144 of the Income Tax Act, 1961.

16. The dispute in this present case pertains to sale of 110 cents of land out of total extent of 8.59 acres. It is the specific case of the petitioner that though the sale deed, dated 26.02.2007 declares a sale consideration as Rs.15,00,000/-, receipt of such confirmed in the said sale deed, the petitioner has not received a single penny from the buyer. That apart, it is submitted that the petitioner was not the sole owner of the property but a co-owner along with the sibling and that tax if can be demanded only on the proportionate value. Even as per the petitioner, the petitioner has not received any consideration from his buyer, namely, V.Palanikumar. Therefore, the petitioner’s demand for cross-examination of his sibling is an exercise in futility. In the remand report that they had categorically stated that they had given up their rights and it is the petitioner who sold the land to V.Palanikumar after given their power in his favour. Thus, no useful purpose will be served by summoning his siblings for cross-examination.

17. Therefore, I do not find any merits in the arguments advanced by the learned counsel for the petitioner that there was a violation of principles of natural justice as no cross-examination was not allowed to cross-examine the petitioner’s siblings. As the far as the cross-examination of the buyer, V.Palanikumar is concerned, in my view, it was also irrelevant as documents namely sale deed speak for itself. Whatever, the sale consideration declared in the sale deed, dated 26.02.2007 is of no relevant. The value that has to be determined under Section 50 C of the Income Tax Act. If the guideline value is more than the value declared in the document, then guideline value is relevant for payment of tax. whether the petitioner has received the aforesaid amount is of no consequence. As long as a sale was effected the petitioner is bound by Section 50 C of the Income Tax Act.

18. Further, argument that value has to be redetermined under Section 50 C (2) was taken up for the first time. It is evident that the petitioner is dragging on the proceedings to stall recovery of the tax amount. I do not find any merits in this writ petition.

Therefore, the writ petition stands dismissed. I however give liberty to the petitioner to file a statutory appeal within a period of thirty days from the date of receipt of copy of this order. If such an appeal is filed within such time, the petitioner's appeal shall be numbered and disposed on merits. The appellate authority shall examine the case independently uninfluenced by any operation in this order touching on the merits. Needless to state that before orders are passed, the petitioner shall be heard. No costs. Consequently, the connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (P&A)

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Sub Assistant Registrar(CS)

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To

1.The Chairperson ,
The Central Board of Direct Taxes,
Department of Revenue - Ministry of Finance,
Government of India,
New Delhi.

2.The Additional/Joint/Deputy/Assistant Commissioner,
of Income Tax/Income Tax Officer,
National e-Assessment Center,
Delhi.

3.The Income Tax Officer,
Ward-4, Tirunelveli.

+1 CC to M/s.A. MOHAMED HANEEF, Advocate (SR-17626[F] dated 08/04/2022)

+1 CC to M/s.N. DILIPKUMAR, Advocate (SR-17657[F] dated 08/04/2022)

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