IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.10.2023

Coram

The Hon'ble Mr.Justice Krishnan Ramasamy

W.P.No.2953 of 2022
and

W.M.P.No.3111 & 3112 of 2022

Ganesh Kumar ... Petitioner

versus

Income Tax Officer
Non-Corporate Ward 4(3),
No.16, BSNL Buildings Tower 01,
2nd Floor, Greams Road,
Chennai-600 006. ... Respondent

Writ Petition filed under Article 226 of the Constitution of India seeking for a Writ of Certiorari to call for records pertaining to the impugned assessment order dated 29.09.2021 bearing ITBA/AST/S/147/2021-22/1036031771(1) purportedly issued under Section 147 of the Income Tax Act, 1961 for the Assessment Year 2017-18 by the respondent and quash the same.

For Petitioner	:	Mrs.T.V.Muthu Abirami
For Respondent	:	Dr.B.Ramaswamy,

Senior Standing Counsel

ORDER

The challenge in this Writ Petition is to the assessment order passed by the respondent dated 29.09.2021 under Section 147 of the Income Tax Act, 1961 for the Assessment Year 2017-18 and to quash the same.

2. The brief facts of the case is as follows :-

i) The petitioner is an assessee on the files of the respondent under the provisions of Income Tax Act, 1961 (hereinafter, referred to as 'I.T. Act' and he has been regularly filing his return of income as per the provisions of said Act. The petitioner has got two PAN Cards, one PAN Card bearing No.AZNPG3136D has been used for bank transaction, and another PAN Card bearing No.AEQPG5384P has been used by the petitioner for filing his return of income. Thereafter, on professional advice, he had surrendered PAN AZNPG3136D.

ii) Whileso, based on an information from Actional Information Monitoring System (AIMS) module, the respondent issued a notice under

Section 142 (1) on 09.03.2018 for filing his return of income for the said assessment year in respect of PAN AZNPG3136D and thereafter, issued a notice under Section 142 (1) on 22.05.2019 seeking various details to be submitted by the petitioner on or before 06.06.2019 and also issued summon under Section 131 dated 22.05.2019 to the petitioner for appearing before the respondent on 06.06.2019. The petitioner and his chartered accountant appeared before the respondent on 06.06.2019 and stated that the petitioner has been filing his return of income and the PAN is AEQPG5384P and that he has surrendered AZNPG3136D and the petitioner's chartered accountant also filed a letter dated 06.06.2019, furnishing certain documents.

iii) Thereafter, on 17.09.2021, the petitioner received a show cause notice calling for an explanation from the petitioner, as to why, the cash deposit made to the tune of Rs.10,00,000/- during the financial year 2016-17 should not be treated as an unexplained investment under Section 69 of I.T. Act. In the said notice, it was stated that the proceedings initiated under Section 142 (1) dated 09.03.2018, in respect of PAN AZNPG3136D was dropped and reopening notice under Section 148 was issued on 26.09.2019 in respect of PAN Number AEQPG5384P. Later, without affording any opportunity, passed the impugned order and in pursuance of the impugned order dated 29.09.2021, the respondent also issued notices on 15.11.2021 and 25.11.2021 initiating penalty proceedings and ultimately, vide notice dated 21.01.2022, attached the petitioner's bank account and recovery was also made. Hence, aggrieved by the impugned order of assessment and the consequential penalty proceedings and the order attaching the petitioner's bank account, the petitioner is before this Court seeking justice by way of filing this Writ Petition.

3. Mrs.T.V.Muthu Abirami, learned counsel appearing for the petitioner would submit that the petitioner is an illiterate and all his financial affairs were taken care of only by his father till his death in 2020 and owing to lack of knowledge, though he is already in possession of one PAN Card, bearing No.AEQPG5384P, he has obtained another PAN AZNPG3136D, however, on professional advice, he surrendered PAN AZNPG3136D. The learned counsel submitted that the petitioner used to file Income Tax Returns for all the assessment years only by using AEQPG5384P; that similarly for AY 2017-18, the petitioner filed ITR stating his gross total income at Rs.4,42,200/-, however, based on an information obtained from AIMS, which shows that no ITR was filed by the petitioner in respect of PAN AZNPG3136D, the respondent initiated proceedings against the petitioner under Section 142 (1) of I.T. Act vide notice dated 09.03.2018 calling upon the petitioner to file ITR for AY 2017-18 in respect of PAN AZNPG3136D; that the petitioner on receipt of such notice appeared before the respondent along with his Chartered Accountant on 22.05.2019 and explained that the petitioner has been regular in filing ITRs for all the assessment years and in proof of the same produced all necessary documents and also stated that PAN AZNPG3136D was surrendered, however, the respondent-Department initiated penalty proceedings and said penalty proceedings are pending, and during such course of proceedings, the respondent raised a query as regards the cash deposited by the petitioner during the demonetization period to the tune of Rs.10,00,000/-during the financial year 2016-17, which is relevant to the AY 2017-18 and the petitioner explained that he has a received a gift of Rs.7,00,000/- from his wife; Rs.8,00,000/- from his mother and Rs.12,00,000/- from his father; and also filed documents, enclosing the affidavit of his father, mother and wife.

3.1 The learned counsel further submitted that, in the interregnum period, the petitioner received no notice, but, all of a sudden, the petitioner to his shock, received a show cause notice dated 17.09.2021, wherein, it is stated that the proceedings initiated vide notice under Section 142 (1) dated 09.03.2018 was dropped and that reopening notice under Section 148 was issued on 26.09.2019 for PAN AEQPG5384P, thereafter, the petitioner received a notice dated 20.09.2021 fixing the date of hearing on 27.09.2021 and the petitioner immediately on receipt of such notice, engaged an Advocate and an Income Tax Practitioner to represent him before the respondent, who appeared before the respondent on 27.09.2021, and sought for time for reply, however, the respondent denied the petitioner's request by stating that the assessment is time barred on 31.09.2021 and passed the impugned assessment order under section 147 on 29.09.2021, which culminated in an order attaching the petitioner's bank account and a sum of Rs.2,19,355 and Rs.11,785/- were recovered from the petitioner's banks (viz., Lakshmi Vilas Bank and Bank of India respectively).

3.2 The learned counsel assailed the impugned orders on many grounds, firstly, by contending that the impugned order passed under Section 147 of I.T.Act is bad in law and the notice issued under Section 148 is erroneous, since the time limit for completing the scrutiny assessment under Section 142 read with Section 143 existed, it is impermissible to issue notice under Section 148 to reopen the assessment. Secondly, it is contended that the impugned order is non-est, inasmuch as, in terms of the Circular issued by **C**entral **B**oard of **D**irect **T**axation (CBDT) vide notifications dated 13.08.2020, which states that the assessments, which are pending as on 13.08.2020 or initiated on or after 13.08.2020 should be completed only as per the Faceless Assessment Scheme and as per the said notification, the assessment ought to have been completed only through faceless assessment mode and not by physical mode.

3.3 Thirdly, the learned counsel for the petitioner contended that that the impugned order is in violation of principles of natural justice, since, no opportunity was given to the petitioner, when the direction received from the Joint Commissioner under Section 144 A for initiation of reopening proceedings is prejudicial to the petitioner. Finally, the learned counsel contended that though the respondent has stated in the impugned order that he has jurisdiction to pass the impugned assessment order in terms of notification issued by CBDT dated 22.09.2021, the said notification is not applicable to the petitioner's case and therefore, impugned order suffers from want of jurisdiction, since by virtue of earlier notification issued by CBDT dated 13.08.2020, once the petitioner's files were transferred from physical mode to faceless assessment mode, the subsequent notification dated 22.09.2021 cannot have a role to play. Thus, by averring so, the learned counsel prayed for setting aside the impugned order.

4. On the other hand, Mr.B.Ramaswamy, the learned Senior Standing counsel for the respondent would submit that during the demonetization period, which pertains to the financial year 2016-17, the petitioner made a substantial cash deposits of Rs.10,00,000/ and as per the information of AIMS for the AY 2017-18 in respect of PAN AZNPG3136D, the petitioner had filed no tax return and hence, a notice under Section 142 (1) dated 09.03.2018 was issued to the petitioner calling for filing return of income for assessment year 2017-18, pursuant to which, assessee (petitioner)appeared and admitted that he had two PANs in his name and that he had used PAN AZNPG3134P for filing return of income for all assessment years and surrendered PAN AZNPG3136D, however, since the petitioner obtained two PANs, he was imposed with penalty. Thereafter, as per the notification issued by CBDT dated 13.08.2020, the petitioner's files were transferred from physical assessment mode to NFAC to make through the faceless assessment mode and NFAC also issued number of notices under Section 148 and 142 (1) on 28.07.2021, 06.08.2021 and 26.08.2021 for which, the petitioner failed to give any response.

4.1 The learned Senior Standing Counsel for the respondent furthermore submitted that as per Notification issued by CBDT dated 22.09.2021 "where the assessment could not have been completed through faceless assessment mode due to technical/procedural constraints, the jurisdictional Assessing Officer should pass the assessment order" and in the present case, since the petitioner is in possession of two PANs and anticipating that there may be some technical issue and reopening assessment proceedings were pending for long time and further, the petitioner also failed to give response to any of the notices issued by NFAC, the case of the petitioner was transferred back to physical assessment mode and the concerned Jurisdictional Assessing Officer, being the respondent herein, issued a show cause notice dated 17.09.2021 and as the petitioner failed to respond even to such show cause notice, the respondent based on the direction issued by Joint Commissioner of Income Tax issued notice dated 27.09.2021, passed by the assessment order on 29.09.2021.

4.2 Therefore, the learned Senior Standing Counsel submitted that the respondent acted only in accordance with the directions issued by JCIT vide letter date 17.09.2019, whereby, the proceedings initiated against the petitioner under Section 142 (1) dated 09.03.2018 in respect of PAN AZNPG3136D was dropped and reopen proceedings for income escaping assessment under Section 147 for PAN AEQPG5384P with prior approval of PCIT-9 was initiated and despite the fact that multiple notices were issued to the petitioner, since the petitioner failed to respond to any of the notices, either by way of filing return of income for AY 2017-18 or by filing appropriate documents, or availed any of the opportunities provided to him for hearing, the respondent passed the impugned order and even after the impugned order has been passed, the petitioner was put on notices on 15.11.2021 and 25.11.2021, with regard to the initiation of penalty proceedings, to which even, the petitioner has not responded and therefore, respondent, in furtherance of the impugned assessment order rightly ordered for attaching the petitioner's account and ordered for recovery and recovery was also made. Therefore, the learned Senior Standing Counsel would submit that after providing due opportunities to the petitioner, assessment was made by physical mode and same warrants no interference, and hence, prayed for dismissal of the Writ Petition.

5. Refuting to the aforesaid contentions, the learned counsel for the petitioner submitted that as already stated above, petitioner is an illiterate and the petitioner was not aware of as to when the assessment proceedings were transferred from physical mode to faceless assessment mode, and when it was re-transferred to physical mode and all such things since none of the notices that were stated to have been issued through the web portal were served on the petitioner directly through physical mode of communication. Further, it is submitted that, since the petitioner, on receipt of notice issued in respect of initiation of proceedings under Section 142 (1) dated 09.03.2018 appeared before the respondent and explained the reason for obtaining two PANs and also explained the reason in regard to the query raised by the respondent in regard to unexplained investment made by him during the demonetization period to the tune of Rs.10,00,000/- by furnishing all required documents with regard to the identity, genuineness and creditworthiness of the transaction made and since there was no notice received by the petitioner for nearly two years, the petitioner was under an impression that the proceedings initiated under Section 142 (1) vide notice 09.03.2018 might have been closed/dropped, but only when the petitioner received the show cause notices dated 17.09.2021, the petitioner came to know that the proceedings dated 09.03.2018 was dropped, however, the petitioner has not been served with any notice as regards the closure proceedings dated 09.03.2018.

5.1. Therefore, the learned counsel for the petitioner contended that unless and until, the petitioner has been served with any notice through physical mode of communication, the petitioner could not expected to be aware of what is happening in regard to his assessment proceedings, and immediately when the petitioner received the show cause notice dated 17.09.2021 and notice under Section 142(1) dated 20.09.2021, requiring the petitioner to appear before the respondent on 27.09.2021, the petitioner immediately engaged a counsel and appeared before the respondent and sought for time, however, the respondent rejected the request by stating that assessment is getting time barred and passed the assessment order. Therefore, the learned counsel prayed for setting aside the impugned order.

6. I have given due considerations to the submissions made by the learned counsel appearing for the petitioner and the learned Senior Standing Counsel for the respondent and perused the materials available on record.

7. The petitioner is an illiterate person and unwittingly, he had obtained two Permanent Account Numbers, viz., AEQPG5384P and AZNPG3136D (for which, the Department also has to be blamed). The petitioner used to file Income Tax Returns for all the assessment years only by using AEQPG5384P and accordingly for AY 2017-18, the petitioner filed returns stating his gross total income at Rs.4,42,000/-. However, based on an information from AIMS, which shows that no ITR was filed by the petitioner in respect of PAN AZNPG3136D, proceedings were initiated against the petitioner under Section 142 (1) of I.T. Act and notice dated 09.03.2018 was issued calling upon the petitioner to file ITR for AY 2017-

18 and pursuant thereto, the petitioner was summoned by the respondent-Department on 22.05.2019, to appear before them on 06.06.2019. The petitioner, on receipt of such notice and summon, appeared before the respondent along with his Chartered Accountant and explained that he has been regular in filing ITRs and produced all necessary documents as proof and also explained the reason for having obtained two PANs and surrendered PAN AZNPG3136D, for which, the respondent-Department also initiated penalty proceedings and said penalty proceedings are pending. So far as the query raised by the respondent with regard to the cash deposit made by the petitioner during the demonetization period to the tune of Rs.10,00,000/- for the financial year 2016-17, pertaining to AY 2017-18 is concerned, the petitioner explained that he has a received a gift of Rs.7,00,000/- from his wife; Rs.8,00,000/- from his mother and Rs.12,00,000/- from his father; and also filed documents, enclosing the affidavit of his father, mother and wife.

7.1. Thereafter, since the petitioner received no notices, the petitioner assumed the proceedings initiated under Section 142 (1) dated 09.03.2018 might have been closed/dropped, since the petitioner has not been served with any notice as regards the closure of proceedings dated 09.03.2018, though JCIT issued direction for closure of proceedings on 17.09.2019. However, the petitioner, to his shock received a show cause notice, that too, after a period of two years i.e. on 17.09.2021, stating that proceedings under Section 142(1) was dropped in regard to PAN AZNPG3136D however, reopening proceedings under Section 148 in respect of PAN AZNPG5384P was issued on 26.09.2019 and thereafter, the petitioner received a notice on 20.09.2021, whereby, he was asked to appear before the respondent on 27.09.2021, on which date, the petitioner appeared before the respondent along his Advocate and Income Tax Practitioner and a requested time for filing necessary documents to defend his case, however, the said request was rejected by the respondent on the ground that the assessment proceedings is time barred on 31.09.2021 and passed the assessment orders.

7.2. In the interregnum period, by virtue of the notification issued by CBDT dated 13.08.2020, the petitioner's files were transferred from physical assessment mode to NFAC for making assessment through faceless assessment mode. It is the contention of the learned counsel for the petitioner, by virtue of the circular, dated 13.08.2020, once the files were transferred to the Faceless Assessment Officer, assessment has to be dealt with only in accordance with Faceless Assessment mode and not through physical mode, in the event, anything is not done in the conformity with para 2 of the circular, dated 13.08.2020, the same has be treated as non-est in law. In this context, it would be beneficial to refer to the circular dated 13.08.2020, which is extracted hereinbelow.

> "The Central Board of Direct Taxes (the Board) vide Order F.No. 187/3/2020-IT?? dated 13th August, 2020 (the Order) read with order under section 119 of the Income- tax Act, 1961 (the Act) regarding mutatis mutandis application of Orders, Circulars etc. issued in order to implement the Scheme to Faceless Assessment 's 144B of the Act, vide F.No.187/3/2020-ITA-I dated 31st March, 2021 directed that all the Assessment Orders shall be passed by the National Faceless Assessment Centre (NaFAC) w/s 144B of the Act except as under:-
>
> i. Assessment orders in cases assigned to Central Charges.
>
> ii. Assessment orders in cases assigned to International Tax Charges.
>
> **2.** In partial modification of the Order vide Order

F.No. 187/3/2020-ITA-I dated 6th September, 2021, in addition to the exceptions provided in the said Order, the following exception was also added:

iii. Assessment orders in cases where pendency could not he created on ITBA portal because of technical reasons or cases not having a PAN, as the case may be.

3. In further modification of the above Order, the Board in exercise of powers under section 119 of the Act, hereby directs that in addition to the exceptions as provided in the said Orders, the following exception is hereby added as under: -

iv. Assessment orders in cases

(a) set aside to be done de novo

or

(b) to be done u's 147 of the Act

for which the time limit for completion expires on 30-9-2021 pending with the jurisdictional Assessing Officer as on 11-9-2021 or thereafter, which cannot be completed as per the procedure laid down under section 1448 of the Act due to technical/procedural constraints in the given period of limitation

4. Accordingly, the Board clarifies that assessment in cases at (iii) and (iv) above shall be completed by the jurisdictional Assessing Officer.

5. The Board further reiterates that the exception at (iv) above is applicable only na the cases for which the time limit for completion expires on 10-9-2021

6. This order comes into effect immediately."

7.3 Per contra, it is the contention of the learned Senior Standing Counsel for the respondent-Department that though the petitioner's files were transfered from physical mode to faceless assessment mode, since the petitioner failed to give response to any of the notices issued by NFAC and respondent-Department and that there were two PANs in respect of one person (petitioner) and anticipating that there may be some technical issue and that in respect of the petitioner, reopening assessment proceedings were pending since 2019, by virtue of subsequent notification issued by CBDT dated 22.09.2021, the petitioner's files were once again transferred to jurisdictional Assessing Officer for making assessment through physical mode. At this stage, it would be apposite to refer to the subsequent notification issued by CBDT dated 22.09.2021, which is extracted hereinbelow:-

> "Where the time limit for passing assessment order expires on 31.09.2021 and when the cases were pending with the jurisdictional Assessing Officer as on11.09.2021, and that, where, the assessment could not

be completed through faceless mode due to technical/procedural constraints, jurisdictional Assessing Officer should pass the assessment order.

7.4 Therefore, according to the respondent, the case of the petitioner was transferred back to physical assessment mode only with an intention to afford an opportunity to the petitioner.

7.5 This Court is unable to accept the contention of the learned Senior Standing Counsel for the respondent. If it had been the real intention of the respondent-Assessing Officer to provide fair opportunity of hearing to the assessee (petitioner in this case) to put forth their defence, the same ought to have been extended to the petitioner/assessee in a real nature and it should not be a nominal one. In the present case, it could be clearly seen that, soon after the issuance of show cause notice, which is dated 17.09.2021, the petitioner has been issued with another notice dated 20.09.2021, that too, within a period two days, requiring him to appear before the respondent on 27.09.2021, and within a period of another two days, i.e 29.09.2021, impugned order came to be passed by the respondent, and eventhough the petitioner made a request for granting time during the personal hearing held on 27.09.2021, the respondent negatived the same by stating that the petitioner has come at the fag end, and therefore, his request cannot be considered as the assessment is time barred on 30.09.2021.

7.6 Further, the fact remains that the Circular issued by CBDT itself was only on 22.09.2021, whereas, the respondent assumed jurisdiction much earlier to the notification, i.e. on 17.09.2021, and the date on which, he assumed jurisdiction, he had issued the show cause notice without any jurisdiction. Though the learned Senior Standing Counsel for the respondent contended that the petitioner has been served with multiple number of notices and the petitioner failed to respond to those notices, all the notices that were stated to have been issued to the petitioner were only through web portal and none of the notice were served on the petitioner directly through physical mode of communication and unless and until, the petitioner has been served with any notice through physical mode of communication, the petitioner could not expected to be aware of what is happening in regard to his assessment proceedings. Thus, this Court feels that one more opportunity ought to have been granted to the petitioner. Therefore, this Court is of the view that the impugned order has to be held to be untenable and liable to be set aside and the matter has to be remitted back for reconsideration.

8. Accordingly, this Writ Petition is allowed, the impugned order is set aside and the matter is remanded back to the respondent for re-consideration. The respondent is directed to fix a date for personal hearing of the petitioner, if at all, if any clarification is required from either side, the same has to be exhausted on the said hearing and the petitioner is directed to produce whatever documents, he has, in support of his case on the said date of personal hearing, and the respondent, after perusing the documents that may be produced by the petitioner by way of filing reply/objections and after conducting a full-fledged hearing, is directed to pass fresh orders on the assessment. Since the impugned order is quashed by this Court, all the consequential proceedings initiated in furtherance of the impugned order, viz., the penalty proceedings, and consequential order attaching the petitioner's bank accounts has to be necessarily given a goby. However, since the respondent has already initiated recovery proceedings and a sum of Rs.2,19,355 and Rs.11,785/- were recovered from the petitioner's banks (viz., Lakshmi Vilas Bank and Bank of India respectively), the same shall be abide by the orders to be passed by the respondent.

9. In the result, the Writ Petition is allowed, as stated supra. No costs. Consequently, connected Writ Miscellaneous Petitions are closed.

10.10.2023

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Index : Yes.no

To

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