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W.P.No.6695 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.02.2023

CORAM:

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

**W.P.No.6695 of 2020 &
W.M.P.No.7951 of 2020**

Suyambulingam Suresh

... Petitioner

VS.

The Income Tax Officer,
Non Corp, Ward 15(5) CHE,
Room No.312, 3rd Floor,
Chennai - Wanaparthi Block,
121, Mahatma Gandhi Road,
Chennai - 34.

...Respondent

Prayer: Writ petition filed under Article 226 of the Constitution of India for writ of Certiorari calling for the records on the files of the respondent in Order No.ITBA/AST/S/143(3)/2019-20/1022229951(1) dated 12.12.2019 and quash the same as being without jurisdiction and is in violation of principles of natural justice and hence invalid and illegal.

For Petitioner : Mr.V.Srikanth

For Respondent : Mr.R.S.Balaji, Standing Counsel,
Assisted by
Ms.S.Premalatha,
Standing Counsel



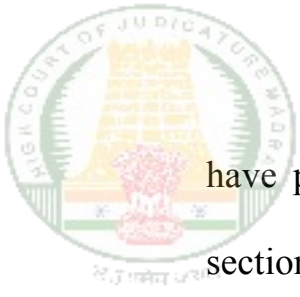
ORDER

The petitioner has challenged the assessment order dated 12.12.2019 passed by the respondent in this writ petition on the following grounds:

(a) No personal hearing was afforded to him in the impugned assessment proceedings, despite the petitioner having made a specific request in his reply dated 02.12.2019.

(b) Under the impugned assessment order, a sum of Rs.1,60,000/- which the petitioner had submitted as deduction under Chapter 6A of the Income Tax Act has been disallowed, though the show cause notice dated 27.11.2018 did not disclose such a disallowance.

2. A counter affidavit has been filed by the respondent denying the contentions of the petitioner and stating that several opportunities were granted to the petitioner to respond to the notices issued under sections 142(1) and 143(2) of the Income Tax Act and none of those notices were responded to by the petitioner. According to the respondent, for the mistake alleged to have been committed by the Auditor or the Income Tax Practitioner engaged by the petitioner, the impugned assessment order cannot be quashed. According to the respondent, the petitioner ought to



have produced proof before the respondent for claiming deduction under section 80C and 80TTA of the Income Tax Act, but having failed to do so, despite several opportunities being granted to him, he has filed this writ petition which is not maintainable. According to the respondent, the petitioner ought to have failed a statutory appeal if aggrieved by the impugned assessment order. According to the respondent, only on account of inflated expenditure declared by the petitioner in the revised annual return filed by him for the assessment year 2017-18, the impugned assessment order has been passed by the respondent after giving due consideration to the materials available on record.

3. Heard Mr.V.Srikanth, learned counsel for the petitioner and Mr.R.S.Balaji, learned Standing Counsel assisted by Ms.S.Premalatha, learned Junior Standing Counsel appearing for the respondents.

4. The learned counsel for the petitioner in support of the petitioner's contention relied upon a decision rendered by me in the case of ***Nadimuthupathar Sundarapandian Elavarman vs Assistant Commissioner of Income Tax*** reported in ***2020 SCC Online Mad 24670***



and in particular, he referred to paragraph 9 in the said order and would submit that since the personal hearing was not afforded to the petitioner, despite a specific request made by him in his reply, the impugned assessment order has to be quashed on account of violation of principles of natural justice.

5. Learned counsel for the petitioner also drew the attention of this Court to the note on E-proceeding which was attached along with the notices issued to the petitioner under section 143(2) of the Income Tax Act, 1961 and would submit that even as per the said note, whenever a show cause notice contemplates any adverse view against the assessee, the request for personal hearing made by the assessee has to be acceded by the respondent. Therefore, according to him, when an assessment order has been passed without affording a personal hearing to the assessee, that too, when a specific request has been made by the assessee, the impugned assessment order has to be quashed.

6. Learned counsel for the petitioner would submit that due to the negligence of the Chartered Accountant or the Income Tax Practitioner



whom the petitioner had engaged and whose Mail Id was furnished to the respondent, the petitioner cannot be held responsible, since the entire communications sent by the respondent were sent only to the Email address of the Chartered Accountant or the Income Tax Practitioner.

7. Per contra, learned Standing Counsel appearing for the respondent reiterated the contents of the counter affidavit filed by the respondent. She would submit that several opportunities were granted to the petitioner by the respondent to respond to the notices issued under sections 142(1) and 143(2) of the Income Tax Act, 1961 and only due to the fact that the petitioner did not respond to the notices and did not produce documents to substantiate his claim that he had incurred expenditure for which it has been disallowed under the impugned assessment order, the respondent has passed the impugned assessment order. She would also submit that if aggrieved by the impugned assessment order, the petitioner ought to have filed a statutory appeal, but instead has chosen to file this writ petition which according to her is not maintainable.

**Discussion:**

8. As seen from the impugned assessment order, several opportunities were granted to the petitioner by way of the notices issued under sections 142(1) and 143(2) of the Income Tax Act which is also not disputed by the petitioner in this writ petition. However, the only contention of the petitioner is that the said notices were received in the Email address of the Chartered Accountant or the Income Tax Practitioner engaged by him for filing the revised return of income. According to the petitioner, the income Tax Practitioner or the Chartered Accountant did not communicate with the petitioner about the notices received from the respondent and that is the reason as to why the petitioner did not respond to the notices sent by the respondent, prior to the issuance of Show Cause Notice.

9. The petitioner has engaged the service of the Chartered Accountant, only after reposing faith and trust in him. For the negligence if any of the Chartered Accountant or the Income Tax Practitioner, the respondent cannot be held responsible. Therefore, the contention of the petitioner that he was unable to respond to the notices under section 142(1) and 143(2) of the Income Tax Act has to be necessarily rejected.



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10. Admittedly no documents were produced by the petitioner before the respondent to substantiate his claim that he had actually incurred expenditure which has been disallowed in the impugned assessment order, despite several opportunities having been given to the petitioner, pursuant to the notices issued by the respondent. The amount involved is also a meagre sum of Rs.3,80,878/- which the respondent has directed the petitioner to pay, as seen from the computation sheet dated 01.02.2012 attached to the impugned assessment order. Even the pre-deposit amount for obtaining stay from the statutory appellate authority is only 20% of the aforesaid sum.

11. Having failed to make use of the opportunities granted by the respondent to respond to the notices sent by them, the question of entertaining this writ petition will not arise. However, the petitioner categorically claims that if he had been afforded an opportunity of personal hearing, he would have been able to establish before the authority concerned that he had infact incurred the expenditure which has been disallowed under the impugned assessment order. The petitioner having failed to respond to the several notices sent by the respondent, the petitioner cannot contend that



he was not afforded personal hearing. The tax liability involved is also a meagre sum and therefore, the question of entertaining this writ petition, when the petitioner has failed to respond to the several notices issued by the respondent, will not arise.

12. For the foregoing reasons, this Court is inclined to permit the petitioner to file the statutory appeal as against the impugned assessment order within a time frame to be fixed by this Court. This Court is of the considered view that a period of four weeks will suffice for the petitioner to prefer the statutory appeal, if aggrieved by the impugned assessment order. Excepting for the aforementioned limited relief to be granted by this Court, the contention of the petitioner that the impugned assessment order has been passed in violation of principles of natural justice is rejected by this Court.

13. In view of the above, this writ petition is **disposed of** by directing the petitioner if so advised to file the statutory appeal before the competent appellate authority under the Income Tax Act, 1961 as against the impugned assessment order dated 12.12.2019 within a period of four weeks from the date of receipt of a copy of this Order. On receipt of the said statutory



appeal from the petitioner within the stipulated time as stated supra, the competent appellate authority shall entertain the appeal and decide the same

on merits and in accordance with law without reference to limitation.

However, it is made clear that if the petitioner fails to exercise the statutory appeal remedy within the stipulated time, the respondent is at liberty to enforce the impugned assessment order against the petitioner in accordance with law. No costs. Consequently, connected miscellaneous petition is closed.

14.02.2023

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Index:Yes/No

Internet:Yes/No

Speaking/Non-speaking orders



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To

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ABDUL QUDDHOSE, J.

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