



W.P.No.6698 of 2020

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 14.06.2023

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THE HONOURABLE DR. JUSTICE ANITA SUMANTH

W.P.No.6698 of 2020 and
WMP.Nos.7953 & 7956 of 2020

Angusamy Gounder Subbu Rathinamun

... Petitioner

Vs

The Assistant Commissioner,
Circle 1, Tirupur,
Office of the Assistant Commissioner
of income tax, Tiruppur - 641 602.

... Respondent

Prayer: Writ Petitions filed under Article 226 of the Constitution of India, praying to issue a writ of Certiorari, to call for the records on the files of the respondent in ITBA/AST/S/143(3)/2019-20/1022786938(1) dated 20.12.19 and quash the same as being without jurisdiction and violative of principles of natural justice and hence arbitrary, invalid and illegal.

For Petitioner : Mr.V.Srikanth
For Respondent : Mr.R,S.Balaji
Senior Standing Counsel

ORDER

The challenge in this matter is to an order of assessment dated 20.12.2019 passed under the provisions of the Income Tax Act, 1961 (in short 'Act').



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2.The petitioner has, in the affidavit filed in support of this writ petition raised various grounds assailing the order of assessment. However, in the course of hearing before me, Mr.V.Srikanth, learned counsel for the petitioner has restricted the arguments only to the veracity or otherwise of notice under Section 143(2) of the Act.

3.According to him, and he is right in this, a notice under Section 143(2) of the Act is a condition precedent to pass an order of assessment under the provisions of Section 143(3). In this case, such a notice has been issued. According to the petitioner however, the notice under Section 143(2) dated 09.08.2018 is inadequate as it merely states that the issue of 'share capital/capital' has been identified for examination. An opportunity was afforded under that notice to the petitioner to produce evidence to support the return of income filed.

4.Reliance is placed on a decision of the Delhi High Court in *Hyosung Corporation v. Authority for Advance Rulings and Others* [(2016) 382 ITR 371 (Del)] and an order passed dismissing the review application against the aforesaid decision in the same case reported in 385 ITR 95. These decisions are relied upon to buttress the submission that a notice under Section 143(2) must



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not be seen to be mechanical, but must contain a recording of satisfaction of the assessing authority in regard to the issue selected for scrutiny.

5.The statutory provision is pressed into service to state that the notice must be speaking as regards the lacuna found in the return of income in regard to which the assessing officer solicits supporting information. In the present case according to the petitioner, the requirements under the statutory provision have not been complied with. As a consequence, he would contend the order of assessment is itself liable to be set aside.

6.Per contra, Mr.R.S.Balaji, learned Senior Standing Counsel, who appears for the respondent would submit that the notice under Section 143(2) confirms to all statutory prescriptions and has rightly identified the issue of share capital/capital for further enquiry. On merits, he would submit that the addition has been properly made after application of mind and that the assessment order should be sustained.

7.Having heard both learned counsel, I am of the considered view that there is no merit in the argument advanced by the petitioner. Undoubtedly, a notice under Section 143(2) is a condition precedent for framing of an income tax assessment and in the present case, such notice has been issued.



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8. Following the procedure that is routinely in place, the selection of the return of income filed by the petitioner for assessment year (AY) 2017-18 is computer aided and the selection itself is for limited scrutiny. This means that the issues from the returns are limited and identified in number as opposed to a general scrutiny where the entire return of income is open for verification. In the present case, such issue constitutes share capital/capital.

9. The officer has rightly issued notice under Section 143(2) in the format normally utilised for this purpose and at paragraph 1 thereof, has conveyed to the addressee, the petitioner herein, that the return has been selected for limited scrutiny and that the issue of share capital/capital is what has been identified for further verification. He proceeds to fix the matter for hearing and provides opportunity to the petitioner to appear and cause evidence in support of the return of income. There is nothing further that is required to be set out as far as notice under Section 143(2) is concerned and with this, in my considered view, the notice under Section 143(2) is complete.

10. Reliance on the decision of the Delhi High Court does not advance the case of the petitioner as that decision has been rendered in an entirely different context. The assessee in that case had approached the Authority for Advance



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Ruling (AAR) with an application seeking advance ruling on a question of law.

Section 245R of the Act stipulates the procedure to be followed by the AAR upon receipt of an application for advance hearing. Section 245R(2) states that the AAR may, after examining the application and the records, either allow or reject the application. The proviso to Section 245R(2) states that the question raised shall not be allowed in three situations, enumerated in clauses (i) to (iii) under the proviso.

11.The Delhi High Court considered a question of a bar raised under Clause (i) of the proviso. That bar related to the pendency of the question raised in the application, before any other income tax authority or appellate authority except in the case of a resident applicant. The issue raised in writ petition was whether the question raised by that petitioner was pending before the income tax authority and it was for this purpose that the notice under Section 143(2) was pressed into service.

12.The Bench observed that the notice under Section 143(2) in that case was in general terms and did not indicate anywhere, the specific issue picked up for scrutiny by that assessing authority. They incidentally state that that notice had failed to state specifically the defects noted by the officer in the return of



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income, such as claim of loss, exemption, deduction, allowance or relief as mandated by Section 143(2)(i) of the Act. Thus, the identity of the issue raised by the petitioner in the application before the AAR and that pending before the authority had not been established by that petitioner and the writ petition thus came to be decided adverse to it on the question of bar under Section 245R(2)(i), in those assessment years when the notices had been issued prior to filing of application before the AAR.

13. These are the observations of the Delhi High Court that are relied on by this petitioner:

'27. As far as the notice under Section 143(2) of the Act is concerned, that provision itself stipulates that such notice will be issued by the AO where he has reason to believe that any claim of such exemption, deduction, allowance or relief made in return is inadmissible. It mandates that the notice should specify the particulars of such claim, loss, exemption, deduction or relief. Turning to the notice issued in the instant case to the Petitioner under Section 143(2) of the Act, it is seen that it is in a standard pre-printed format which merely states that "there are certain points in connection with the return of income on which the AO would like some further information". The said notice fails to satisfy the particulars of claim of loss, exemption, deduction, allowance or relief as mandated by Section 143(2)(i) of the Act. In any event the question raised in the applications by the Petitioner before the AAR do not appear to be forming the subject matter of the notices under Section 143(2) of the Act. Consequently, the mere fact that



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such a notice was issued prior to the filing of the application by the Petitioner before the AAR will not constitute a bar, in terms of clause (i) to proviso to Section 245R(2) of the Act, on the AAR entertaining and allowing the applications.'

14.The observations and conclusions as above would not lead to a general principle that a notice under Section 143(2) which is couched in general terms would lose veracity under the Act and would compromise the fate of an assessment that follows. They must be seen in the context of the issue that arose for decision before the Delhi High Court, being the applicability of the bar under Section 245R(2) of the Act. In light of the discussion as above, I am of the categorical view that the notice under Section 143(2) issued in this case does not suffer from any legal infirmity as it satisfies all ingredients under that provision.

15.The order of assessment dated 20.12.2019 is confirmed qua this count. Upon conclusion of dictation of this order, learned counsel for the petitioner would request leave to file a statutory appeal before the Appellate Commission. The writ petition has been instituted on 09.03.2020, a few months beyond the statutory limitation provided. However, learned Standing Counsel does not very seriously object to this Court condoning the intervening delay. Hence, petitioner is permitted to approach the appellate authority by way of statutory appeal and such appeal, if filed, within a period of two (2) weeks from



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date of receipt of this order, shall be taken on file by the Commissioner of Income Tax (Appeals) without reference to limitation, but ensuring compliance with all other statutory conditions.

16.This writ petition is dismissed with liberty. No costs. Connected miscellaneous petitions are closed.

17.It is further to be noted that though an interim stay was granted by order dated 17.03.2020 upon condition that the petitioner remit 20% of the disputed demand, only 10% has admittedly been paid thus far. Hence, the condition imposed by this Court has itself not been complied with and nothing stands in the way of the revenue recovering the disputed demand in accordance with law.

14.06.2023

vs

Index : Yes

Speaking order

Neutral Citation : Yes

To

The Assistant Commissioner,

Circle 1, Tirupur,

Office of the Assistant Commissioner

of income tax,

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Dr.ANITA SUMANTH, J.

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