IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.11.2023

Coram

The Honourable **Mr.Justice Krishnan Ramasamy**

W.P.No.10038 of 2022
and
W.M.P.No.9744 of 2022

Shopping Zone India Pvt. Ltd.,
1414, Srinivasa Nagar,
Kotivakkam, OMR – Kandan Chavadi,
Tamil Nadu – 600 009.
rep. by its Authorized Signatory,
Mr.Venkatesh ...Petitioner

Vs

1. Additional/Joint/Deputy/Assistant
Commissioner of Income Tax,
National Faceless Assessment Centre, Delhi.

2. The Assistant Commissioner of Income Tax,
Corporate Circle 6 (1),
No.121, Mahatma Gandhi Road,
Nungambakkam, Chennai – 600 034. ...Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus to call for entire records of the second respondent contained in impugned notice dated 31.03.2022 bearing ITBA/AST/S/148/2020-21/1032035781(1) issued under Section 148 of the Income Tax Act, 1961 for PAN : AAQCS4007G for AY 2015-16 along with all consequential orders issued thereto including notice dated 31.03.2021 bearing ITBA/AST/S/148/2020-21/1032004857(1) issued by the second respondent and assessment order dated 30.03.2022 bearing ITBA/AST/S/147/2021-22/1042195332(1) issued by the first respondent under Section 147 read with Section 144 B of the Act and to quash the same as arbitrary.

For Petitioner : Mr.Suhirth Parthasarathy

For Respondent : Mr.R.S.Balaji,
Senior Standing Counsel
asst. by Ms.S.Premalatha
Junior Standing Counsel

O R D E R

The challenge in this Writ Petition is to the notice issued by the respondent-Income Tax Department under Section 148 of the Act dated 31.03.2021 for reopening the assessment of the petitioner for AY 2015-16, and the consequential assessment order dated 30.03.2022.

The facts of the case in brief are as follows:-

i) The petitioner is a Private Limited Company and is engaged in the business of marketing, promoting and selling of various consumer products, primarily, through television shopping. For the assessment year 2015-16, the petitioner filed their returns on 30.09.2015, however, the petitioner's files were selected for scrutiny and by way of notices dated 10.05.2016, 03.03.2017 and 23.05.2017, the Assessing Officer sought for certain details and documents. The petitioner responded to the said notices by providing the documents. Thereafter, the Deputy Commissioner of Income Tax passed an assessment order dated 13.09.2017, disallowing certain claim of the petitioner and the petitioner also paid the consequential demand made by the respondent-Department.

ii) Subsequently, on 10.02.2021, the petitioner received summons under Section 131 (1) of the Act for the said assessment year, again, calling for certain details/documents and the petitioner also provided the details/documents as sought for by the respondent. However, the petitioner, to their shock and surprise, received a notice under Section 148 of the Act dated 31.03.2021, stating that he has reason to believe that the income chargeable to tax had escaped assessment within the meaning of Section 147 of the Act. The petitioner vide reply dated 05.04.2021 requested the respondent-Department to provide reasons for reopening the assessment to enable the petitioner to file proper objections/details in that regard, instead, the petitioner received another notice dated 31.03.2021, bearing a different DIN number, and in response thereto, the petitioner uploaded its return of income on 13.05.2021.

iii) Thereafter, on 09.08.2021, the petitioner received notice under Section 142(1) of the Act, to which, the petitioner vide letter dated 11.08.2021, sought reasons for reopening of the assessment and the first respondent on 02.03.2022, provided purported reasons for reopening the assessment under Section 148. Subsequently, on 03.02.2022, the respondent issued a notice under Section 142 (1) and the petitioner on receipt of such notice, on 07.03.2022 sought for two weeks' time to provide all the requested documents, however, the respondent on 09.03.2022 negatived such request citing the limitation aspect. Thereafter, under pressure, the petitioner once again submitted all the details/documents sought for, but, the first respondent without properly examining those documents and without considering any of the submission made by the petitioner, issued a show cause notice dated 27.03.2023 containing draft assessment order and called upon the petitioner to file reply within 48 hours i.e. on or before 29.03.2022. The petitioner, on 29.03.2022, submitted a detailed response, however, on 30.03.2022 at 3.30 p.m., the petitioner received an e-mail stating that a hearing would be held via. video conferencing on 30.03.2022 at 4.30 p.m. and the respondent, on the very same day itself, passed the assessment order reiterating the contents of the draft assessment order and also initiated penalty proceedings against the petitioner. Hence, the present Writ Petition.

2. Mr.Suhirth Parthasarathy, the learned counsel appearing for the petitioner would submit that the petitioner has been issued with a show cause notice dated 27.03.2022 providing only two days' time to file reply, i.e., on or before 29.03.2022, and thereafter, on the very next day, i.e. on 30.03.2022 at 3.30. p.m. the petitioner received an e-mail stating that a hearing would be held via. video conferencing on very same date, i.e. on

30.03.2022 at 4.30 p.m. in which, the petitioner took part and the respondent, on the very same day itself, passed the assessment order reiterating the contents of the draft assessment order and also initiated penalty proceedings against the petitioner.

2.1 The learned counsel for the petitioner would submitted that there was no effective opportunity provided to the petitioner to putforth their contentions and the opportunity of hearing granted to the petitioner was an empty formality, since the entire duration of the video conferencing itself was lasts for six minutes as the Portal was closed and thereafter, on the very same day, the assessment order came to be passed, which itself shows that the impugned order is unsustainable on the grounds of violation of principles of natural justice. In support of his contention that opportunity of hearing provided to an assesssee should be real in nature and it should not be a nominal one, and the assessee should be granted atleast 21 days' time to file their reply, the learned counsel placed reliance on a recent decision rendered by this Court in **W.P.No.354 of 202217.10.2023** in the case of **M/s. Gemini Film Circuit Vs Additional/Joint/Deputy/Assistant**

Commissioner of Income Tax dated 17.10.2023 and therefore, prayed for setting aside the impugned order.

3. Mr.R.S.Balaji, the learned Senior Standing Counsel assisted by Ms.S.Premalatha, learned Junior Standing Counsel for the respondent while reiterating the submission made in the counter affidavit filed by the respondent would submit the respondent-Department issued a show cause dated 27.03.2023 granting two days time to the petitioner to file reply i.e., on or before 29.03.2022, thereafter, on 30.03.2022 at 3.30 p.m., the respondent-Department sent an e-mail stating that a hearing would be held via. video conferencing on 30.03.2022 at 4.30 p.m. and accordingly, at 4.30 p.m. hearing was conducted through video conferencing and since the explanations given by the petitioner was found to be unsatisfactory, the respondent proceeded to confirm the proceedings contained in the show cause notice and passed the impugned assessment order. Therefore, the learned Senior Standing Counsel would submit that the impugned order has been passed only after affording fair opportunities to the petitioner to putforth their contentions and there is no violation of principles of natural justice as alleged by the petitioner, and hence, the Writ Petitions are liable to be dismissed.

4. Considered the submission made by the learned counsel for the petitioner and the learned Senior Standing Counsel for the respondents.

5. In the present case, the petitioner was issued with a show cause notice on 27.03.2022 and time granted to the petitioner to give reply to the show cause notice was only two days, i.e., on 29.03.2022 and the petitioner, with great difficulty filed their reply within the stipulated time. Thereafter, on the very next day, i.e. on 30.03.2022, at 3.30 p.m., the petitioner received an e-mail requiring him to take part in the personal hearing through video conferencing at 4.30 p.m. which is also on the same date and during such conference, the petitioner was heard only for five minutes and thereafter, the Portal was closed and on the very same day itself, the impugned order has been passed.

5.1 The main grievance expressed by the petitioner is that no fair opportunity of hearing was granted to the petitioner before passing the impugned order and the opportunity that was granted to the petitioner cannot be deemed to be fair opportunity, since within a short span of time, the respondent-Department has concluded the assessment proceedings, inasmuch as, the show cause notice itself was issued only on 27.03.2022 and within two days the petitioner was called upon to file their reply on 29.03.2022 and immediately on the very next day, i.e. on 30.03.2022 at 3.30. p.m the petitioner was asked to appear for hearing through video conference within one hour, i.e. at 4.30 p.m. and on the very same day,, the impugned assessment order has been passed. Therefore, according to the learned counsel for the petitioner the petitioner the impugned order suffers from violation of principles of natural justice.

5.2 In fact, this Court, in it's recent decision rendered in **M/s. Gemini Film Circuit Vs. Additional/Joint/Deputy/Assistant Commissioner of Income Tax**, which is relied on by the learned counsel for the petitioner in regard to the provision of fair opportunity of hearing, held that minimum of 21 days has to be granted to an assessee to enable him to file reply in an effective manner, and the opportunity granted to the assessee should be nominal in nature and should not be an empty formality. In this connection, it would be apposite to refer relevant portion of the said order dated 17.10.2023, which is as follows:-

> "**6.7** Therefore, the aspects, which are to be borne in mind by the Assessing Officer before passing any assessment order is that the Assessing Officer, while issuing show cause notice shall provide sufficient time for the assessees to file their reply/objection, minimum of 21 days, unless and otherwise any specific time limit is fixed under the provisions of the Act; thereafter, shall afford an opportunity of personal hearing; .... "

6. In the light of the above decision, this Court is inclined to set aside the impugned order passed by the respondent, since, in the present case, opportunity that was granted to the petitioner was not realistic in nature rather appears to be a nominal one and further, the petitioner has been deprived away of their rights to appear in person to putforth their contention as the petitioner was heard only through video conferencing, which lasted only for five to six minutes and thereafter, the Portal was closed and within a short span of time, no assessee can be expected to putforth their contention in an effective manner. Therefore, this Court holds that the impugned order is in gross violation of principles of natural justice and liable to be aside.

7. Accordingly, the Writ Petition is allowed, the impugned order is set aside and the matter is remanded back to the first respondent for re-consideration, in which case, the respondent is directed to provide an opportunity of personal hearing to the petitioner, which can be fixed by the respondent at any date granting 15 days' time after the receipt of a copy of this order and the petitioner is directed to appear in person on the date fixed for hearing and make their submission together with supportive documents, if any, and thereafter, the respondent is directed to pass orders in accordance with law. Since the impugned order has been set aside all other consequential proceedings initiated against the petitioner pursuant to the impugned order are also liable to be set aside and accordingly, the same are set aside. No costs. Consequently, connected Miscellaneous Petition is closed.

21.11.2023

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Index : yes/no
Neutral Citation : yes/no

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Krishnan Ramasamy,J.,

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