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W.P.No.10941 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.08.2023

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THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.No.10941 of 2022

and

W.M.P.Nos.10537 & 10538 of 2022

Jitendra Kumar

.. 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.Deputy Commissioner of Income Tax,
Non Corp Circle 19(1), Chennai,
No.121, Mahatma Gandhi Road,
Chennai – 600 034.

3.The Additional / Joint / Deputy / Assistant Commissioner
of Income Tax / Income Tax Officer,
National Faceless assessment Centre,
Delhi.

.. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, to call for the records on the file of the 2nd respondent and quash the impugned notice dated 31.03.2021 in ITBA/AST/S/148/2020-21/1032065156(1) for the assessment year 2017-18 and the consequential impugned assessment order in



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ITBA/AST/S/147/2021-22/1041969404(1) dated 29.03.2022 passed by the 3rd respondent as illegal and violation of principles of natural justice.

For Petitioner : Mr.R.Sivaraman

For Respondents : Mr.R.S.Balaji
Senior Standing Counsel

ORDER

The petitioner has challenged the impugned assessment order dated 29.03.2022 and the impugned notice dated 31.03.2021 issued under Section 148 of the Income Tax Act, 1961 (hereinafter referred to as 'the Act, 1961') seeking to re-open the assessment that was completed on 30.12.2019 under Section 143(3) of the Act, 1961.

2.The case on record indicate that a survey was conducted pursuant to which the petitioner was issued with show cause notice dated 18.12.2019, wherein it has been stated as follows:

SHOW CAUSE NOTICE

It is seen that you have cash during demonetization period, as per following table:-



Sl. No.	Account No. ending with	Bank	Total cash deposit during demonetization period	Total cash deposit in SBN (demonetized currency)
1.	2856	Karur Vyshya Bank	Rs.15,00,000/-	Rs.15,00,000/-
2.	1259	ICICI Bank	Rs.55,10,000/-	Rs.55,10,000/-
3.	0362	ICICI Bank	Rs.57,10,000/-	Rs.57,00,000/-
		Total	Rs.1,27,20,000/-	Rs.1,27,10,000/-

3.The petitioner had replied to the same, pursuant to which a scrutiny assessment order came to be passed on 30.12.2019 under Section 143(3) of the Act, 1961.

4.As far as petitioner's brother is concerned, apart from an account at ICICI Bank, Nanganallur, account number ending with 1259, three other accounts were also given in these assessment orders dated 30.12.2019.

5.As far as the account at ICICI Bank, ending with account number 1259 was concerned, the amount was assessed in the hands of the petitioner's brother Vijay Kumar Gupta, vide separate assessment order dated 30.12.2019. Both the petitioner and the petitioner's brother are in appeal before the Appellate Commissioner.



6. Meanwhile, the impugned notice under Section 148 of the Act, 1961 was issued to the petitioner on 31.03.2021 in response to which the petitioner has also filed a return under Section 148 of the Act on 30.04.2021.

7. The petitioner also asked for reasons for re-opening the assessments. By communication dated 20.03.2022, the respondents have given the following reasons for re-opening the assessment:

"During the scrutiny proceedings, the assessee has stated that an amount of Rs. 55,10,000 deposited in ICICI Bank does not belong to him and belonged to Mr. Vijendra Gupta. The assessment was completed by accepting the reply and assessed the cash deposits made in other two bank accounts u/s 68 of the IT Act. However it is noticed that the challan copies available in ITMR that the cash deposits of Rs. 55,10,000/- was made in ICICI bank on various dates in the name of Lalitha Thanga Maligai of which the assessee is the proprietor. Hence the SBN deposited in ICICI Bank to the extent of Rs. 55,10,000/- needs to be brought to tax u/s.68 of the IT Act. In view of the above findings, I have reasons to



believe that the income chargeable to tax has escaped assessment and this is a fit case to reopen the assessment u/s.148."

8. Thereafter, the petitioner has been issued with a show cause notice dated 25.03.2022. The petitioner sent response to the above show cause notice, on the following date by 26.03.2022 by 23.59 hours. The petitioner appears to have requested for a personal hearing. However, without giving any time to the petitioner, the impugned order has been passed on 29.03.2022. The learned counsel for the petitioner would submit that the impugned order has been passed in gross violation of principles of natural justice and therefore, is liable to be quashed.

9. On the other hand, the learned Senior Standing Counsel for the respondents would submit that the petitioner had failed to give proper information and has misguided the Income Tax Department namely the Assessing Officer, which resulted in assessment order dated 30.12.2019, being passed for the assessment year 2017-18 and hence, powers under Section 148 r/w Section 147 was invoked by issuance of the impugned notice dated 31.03.2021.



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10.It is submitted that the petitioner is the proprietor of “Lalitha Thangamaligai” and the account ending with account number 1259 that was that of the petitioner and the petitioner has failed to give proper information at the time of assessment and therefore the Department was constrained to re-open the assessment by issuing notice dated 31.03.2021 under Section 148 of the Act, 1961. Hence, the learned Senior Standing Counsel for the respondents submits that the Writ Petition deserves to be dismissed and prayed for dismissal of the Writ Petition.

11.That apart, the learned Senior Standing Counsel for the respondents submits that on merits also the respondents have verified with the said account indeed belongs to the petitioner and therefore, the impugned order and also the notice does not call for any interference.

12.I have considered the arguments advanced by the learned counsel for the petitioner and the learned Senior Standing Counsel for the respondents.

13.Although the petitioner may have misguided the Department, stating that the account ending with Account Number 1259 at ICICI



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Bank, Nanganallur was not with the petitioner, the fact remains that the petitioner was issued with show cause notice on 25.08.2022. The time given to the petitioner was hardly 24 hours. The petitioner could not have responded to the same in time with full particulars. In any event, the petitioner had sought for a personal hearing which was also not granted to the petitioner. Therefore, I am of the view that the impugned order has to be set aside and the case has to be remitted back to the respondents to pass a fresh order on merits after hearing the petitioner.

14.This exercise shall be carried out by the respondents within a period of eight (8) weeks from the date of receipt of a copy of this order. Since, the assessment was re-opened prior to the amendment to Section 148 of the Income Tax Act, 1961, with effect from 01.04.2021, therefore, the respondents shall pass a speaking order within a period of eight weeks from the date of receipt of a copy of this order. Before passing order, the petitioner shall file a reply / representation to the reasons given by the respondents and thereafter the respondents shall pass appropriate order disposing of the petitioner's objection to re-opening of assessment and thereafter the assessment shall be completed.



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15.The Writ Petition is disposed of with the above observations.

Consequently, the connected Miscellaneous Petitions are closed. No costs.

22.08.2023

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Index : Yes / No
Internet : Yes / No
Neutral Citation : Yes / No

To

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Represented by its Chairperson,
Department of Revenue – Ministry of Finance
Government of India,
New Delhi.
- 2.Deputy Commissioner of Income Tax,
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C.SARAVANAN, J.

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