IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 27.11.2023

CORAM

THE HON'BLE Mr. JUSTICE KRISHNAN RAMASAMY

W.P.No.20694 of 2023
and
W.M.P.No.20053 of 2023

Naresh Sangeetha

... Petitioner

Vs.

1.Income Tax Officer,
Non Corporate Ward 6(1),
Chennai 600 006.

2.Assessment Unit,
Income Tax Department,
New Delhi.

... Respondents

Prayer:

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, to call for the records pertaining to the Notice under Section 148A(b) dated 16.03.2022, PAN No.ALLPS7507C, in DIN: ITBA/AST/F/148A(SCN)/2021-22/1040906233(1), issued by the first respondent and the order under

Section 148A(d) dated 31.03.2022 vide ITBA/AST/F/18A/2021-22/1042352752(1), issued by the first respondent and order dated 28.03.2023 under Section 147 read with Section 144B of the Income Tax Act, PAN No.ALLPS7507C, in DIN: ITBA/AST/S/147/2022-23/1051498461(1) passed by the second respondent and quash the same as illegal and void.

For Petitioner : Mr.Ravi Kannan

For Respondent : Dr.B.Ramaswamy,
Senior Standing counsel

ORDER

This writ petition has been filed challenging the Notice dated 16.03.2022 issued by the first respondent and the orders dated 31.03.2022 and 28.03.2023 passed by the first respondent and the second respondent respectively.

2. The learned counsel for the petitioner had made very many submissions before this Court. However, after some arguments, he had restricted his submissions to the extent as follows:

(i) The learned counsel for the petitioner would submit that the entire proceedings were initiated against the petitioner only based on the statement of one Naresh Jain. However, the said statement of Naresh Jain and the other relevant documents, which were relied upon by the respondents while passing the impugned order, have not been provided to the petitioner. Hence, he requests this Court to direct the respondent to provide the said statement and documents to the petitioner.

(ii) Further, he would submit that the respondent had not provided any opportunity to the petitioner to cross-examine the said Naresh Jain. Hence, he requests for an opportunity to cross-examine Naresh Jain, since the proceedings against the petitioner were initiated only based on the statement of Naresh Jain.

3. He would also submit that the consideration of the above requests by this Court will be sufficient to meet out the case of the petitioner.

4. In view of the above requests, Dr.B.Ramaswamy, learned Senior Standing counsel for the respondent would submit that in such

case, since the respondents had only relied upon the documents, which were obtained from various source based on the statement of Naresh Jain and not relied upon any of the oral evidence of Naresh Jain without relevant documents, the cross-examination of Naresh Jain will only be an empty formality, which is not at all necessary in view of the law laid down by the Hon'ble Apex Court in ***Telestar Travel Pvt Ltd vs. Special Director of Enforcement*** reported in ***(2013) 9 SCC 549***.

5. Further, he would submit that the respondents will provide the documents, which they had relied upon in the impugned order, to the petitioner.

6. In this regard, the learned Senior Standing counsel for the respondent had also filed an affidavit. The relevant portion of the said affidavit is as follows:

> *"5. I submit that multiple documents have been collected based on the oral statements of Mr.Naresh Jain who operated the Penny stock case. The entire investigation order was passed not just based on the*

oral statement of Mr.Naresh Jain but as per the information received inside portal that Mrs.Naresh Sangeetha had transacted in penny stock by name "M/s.Monotype India Pvt. Ltd." to the tune of Rs.38,21,826/-.

6 to 13. ....

14. I submit that therefore, the question of AO depending up the oral statement of Mr.Naresh Jain does not arise. We had corroborated all his statements with proper document, evidence, materials and other such proofs."

7. I have given due consideration to the submissions made by the learned counsel for the petitioner and the respondent and also perused the materials available on record.

8. In the present case, at paragraph No.2.3.16 of the impugned assessment order dated 28.03.2023, it has been stated as follows:

"*2.3.16. A show cause notice proposing the addition was issued to the assessee on 16.03.2023. In response to this show cause notice, assessee submitted* *her reply on 19.03.2023 which is considered and placed on record. In her reply assessee raised the same objection which were raised earlier vide 05.07.2022. Since these objections are already disposed off vide letter dated 12.12.2022, hence need not to be disposed off again in the reply assessee that she has not availed any exemption u/s 10(38) of the Act and also paid LTCG @10% u/s 112 A of the Act. In this regard it is pertinent to mention here that assessee has filed her original return u/s 139(1) of the Act on 31.08.2018 for the AY 2018-19 declaring an income of Rs. 9,94,910/- wherein she has not declared any LTCG and Rs. 35,33,957/- was claimed as exempted LTCG. This return of income was revised on 10.10.2018 and assessee admitting total income of Rs. 45,28,870/- declaring LTCG of Rs. 35,33,957/- and Rs. 3,53,396/- was paid as taxes thereon as an afterthought. Assessee has also stated that Sh. Naresh Jain or his associates are not connected to her and also requested to provide an opportunity of cross examination. Here it is important to mention that cross examination is not necessary (reference is drawn to Hon'ble Supreme court order dated 13.02.2023 in case of Telestar travels Pvt. Ltd. Vs Special Director of Enforcement). As already explained (supra) without any* *strong financials and thin profits and even losses, share price of M/s.Monotype India Ltd increased many folds as a result of artificial jacking by syndicate controlled by Sh. Naresh Jain and assessee is also a beneficiary of it. Direct connection to the kingpin i.e., Sh. Naresh Jain is not necessary but what is important is that assessee is a clear cut beneficiary by receiving fictitious benefits from penny stock M/s.Monotype India Limited. Mere paying of LTCG does not exonerate assessee from these sham transactions in shares of this penny stock."*

9. On perusing the above portion, it appears that a request was made by the petitioner for cross-examining Naresh Jain, since the entire proceedings were initiated by relying upon the various documents, which were obtained from various sources based on the statement of Naresh Jain. However, considering the judgment of the Hon'ble Apex Court in ***Telestar*** case (referred supra), the second respondent had quashed the aforesaid request of the petitioner stating that since the respondent had only relied upon the documents, which were obtained based on the statement of Naresh Jain, the cross-examination of Naresh Jain is not required and accordingly, the second respondent had rejected the request

of the petitioner.

10. No doubt, if the oral statement of a person is not utilized in a case, it is not necessary to cross-examine the said person. In the present case also, it was contended by Dr.B.Ramasamy, learned Senior Standing counsel, that the oral statement of Naresh Jain was not relied upon by the respondent, however, only the documents, which were obtained based on the statement of Naresh Jain was relied upon by them in the impugned proceedings.

11. In reply, the learned counsel for the petitioner would fairly submit that since only the documents are relied upon by the respondents, there is no requirement for cross-examination of Naresh Jain. However, he requests this Court to direct the respondent to provide all the documents, which were relied upon by them in the assessment order based on the information received from Naresh Jain.

12. Considering the above submissions made by the learned

counsel for the petitioner and the respondents, it appears that the respondent had only relied upon the documents, which were obtained based on the statement of Naresh Jain. Hence, this Court is of the view that the petitioner is entitled to get a copy of those documents, which were obtained from various sources based on the statement of Naresh Jain, since furnishing the said documents will enable the petitioner to file her detailed reply.

13. In the present case, the learned Senior Standing counsel for the respondent had fairly submitted that though the respondent had relied upon very many documents to substantiate the case against the petitioner, some of the documents were not provided to the petitioner and the same will be provided at the earliest. Hence, after receipt of the said documents, the petitioner shall file her detailed reply. If no reply is filed, there is no doubt that it will go against the petitioner. In such view of the matter, this Court is inclined to pass the following order:

> (i) The impugned order dated 28.03.2023 alone is set aside and this Court is not inclined to express its view with regard to the other reliefs sought by the

petitioner in this petition. Accordingly, the matter pertaining to the said impugned order dated 28.03.2023 is remitted back to the respondent for re-consideration;

(ii) The respondent is directed to provide the documents, which are relied upon by them, which were received from various sources, based on the statement of Naresh Jain, to the petitioner within a period of 30 days from the date of receipt of copy of this order;

(iii) The petitioner is directed to file her reply along with the documents relied upon in the reply within a period of 30 days from the date of receipt of the aforesaid documents from the respondent;

(iv) Thereafter, the respondent is directed to pass appropriate order in accordance with law after providing an opportunity of personal hearing to the petitioner;

14. With the above direction, this writ petition is disposed of. No costs. Consequently, the connected miscellaneous petition is also closed.

27.11.2023

Speaking/Non-speaking order
Index : Yes / No

Neutral Citation : Yes / No
nsa

To

1.Income Tax Officer,
Non Corporate Ward 6(1),
Chennai 600 006.

2.Assessment Unit,
Income Tax Department,
New Delhi.

KRISHNAN RAMASAMY.J.,

nsa

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(1/2)