IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 23.03.2023

CORAM

THE HONOURABLE **DR. JUSTICE ANITA SUMANTH**

W.P.No.13946 of 2020 and
WMP.Nos.17328 & 17329 of 2020 and
WMP.Nos.5261 & 5263 of 2021

B.Ramakrishnan ... Petitioner

Vs

1.Assistant Commissioner of Income Tax
Non Corporate Circle - 2, Chennai
No.121, Mahatma Gandhi Road,
Chennai 600 034

2.Commissioner of Income Tax (Appeals)-2
Office of the Commissioner of Income-Tax (Appeals)-2
Room No.216, Main Building, 2nd Floor,
121, Mahatma Gandhi Road,
Chennai - 600 034

3.Branch Manager
AXIS Bank, Door No.10,
2nd Street, 3rd Main, CIT Nagar,
Nandanam, Chennai-600 035. ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari calling for the records culminating in the Order bearing No.ITA No.116/2018-19/A.Y.2016-17/CIT(A)-2 dated 14.2.2020 passed by the 2nd Respondent and quash the same.

For Petitioner : Mr.J.Sivanandaraj, Senior Counsel
for Mr.Kaushik Ramaswamy

For Respondents : Mr.V.Mahalingam (for R1 & R2)
Senior Standing Counsel

No Appearance (for R3)

ORDER

The petitioner has challenged an appellate order passed under the provisions of the Income Tax Act, 1961 (in short 'Act'). Though multiple grounds have been raised assailing the order, the sole ground that worthy of consideration is the non-adherence to the principles of natural justice.

2.The petitioner had challenged an order of assessment dated 26.12.2018 before the first appellate authority. The hearing of the appeal concluded on 04.02.2020. On 06.02.2020, the petitioner has filed an application before the first appellate authority, which has been duly received and acknowledged on the same day, seeking an opportunity of cross-examining the three persons, viz., 1)Dr.A.S.Ganesan, 2)Mrs.Deepa and 3)Mrs.Saranya, from whom an amount of Rs.4 crores had been received, Rs.3.60 crores being in cash.

3.The issue for decision related to an addition of an amount of Rs.3.43 crores that had been brought to tax as unexplained cash credit under Section 68. It is this amount which the petitioner states has been received from the aforesaid three persons. To be noted, that there is a discrepancy between the amounts as set out in the order of assessment and as set out in the request for cross-examination filed before the first appellate authority.

4.It is the case of the respondents that order dated 14.02.2020 had been dictated immediately subsequent to the hearing on 14.02.2020, finalised and dispatched on the same day. Learned Senior Standing Counsel would thus defend the impugned order saying that there was no occasion for the officer to have taken note of the request that had been filed post the hearing.

5.True, it would have been appropriate had the petitioner made the request along with the grounds of appeal or atleast in the preliminary stages of the appellate hearing. However, though belatedly, a request has been made and duly brought to the notice of the first appellate authority, which, in the considered view of the Court, ought to have been taken note of by him. It is made clear that the discretion as to whether the request for cross examination is to be accepted or not lies entirely within the domain of the first appellate authority. However in this case, it has not even been taken into consideration and there lies the flaw in the impugned order.

6.The impugned order is set aside and the appeal restored to the file of the Commissioner of Income Tax (Appeals) Unit-2, Chennai-600 034, who is the appropriate appellate authority to hear the appeal now. Let the appellate authority consider the request for cross-examination, afford a personal hearing to the petitioner, grant opportunity for cross-examination, if he thinks appropriate and dispose the appeal, all within a period of three (3) months from the date of receipt of a copy of this order.

7.Learned counsel for the petitioner also states that a petition for rectification has been filed before the first appellate authority on 21.02.2020. Let this also be taken into consideration by the authority in disposing the appeal.

8.Since the regime for appeals is now faceless/virtual, it is made clear that opportunity for cross-examination, should the officer decide that such opportunity be granted, and hearing of the petitioner can be via Video Conferencing, for which requisite link will be forwarded to the parties in advance.

9.This writ petition is allowed. No costs. Connected miscellaneous petitions are closed.

23.03.2023

vs
Index : Yes / No
Speaking Order
Neutral Citation : Yes

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