IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.08.2023

CORAM :

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.No.21596 of 2021
and
W.M.P.Nos.22798 & 22799 of 2021

Napa Radhakrishnan ... Petitioner

Vs.

1.The Income Tax Officer,
National e-Assessment Centre,
Income Tax Department,
Ministry of Finance,
Room No.401, 2nd Floor, E-Ramp,
Jawaharlal Nehru Stadium,
Delhi – 110 003.

2.The Assistant Commissioner of Income Tax,
Non-Corporate Circle – 5(1),
Aayakar Bhavan,
No.121, Uthamar Gandhi Salai,
Nungambakkam, Chennai – 600 034. ... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorari, to call for the records in

DIN:ITBA/AST/S/147/2021-22/1035375067(1) dated 08.09.2021 on the file of the first respondent relating to Assessment Year 2013-14 and quash the same.

For Petitioner	:	Mr.G.Baskar
For Respondent	:	Mr.B.Ramaswamy, Senior Standing Counsel

ORDER

The petitioner is aggrieved by the impugned assessment order dated 08.09.2021 passed by the first respondent for the assessment year 2013-2014. Relevant portion of the impugned order reads as under:

> *"Accordingly Statutory Notice u/s 148 was issued on 23.03.2020 followed by Notice u/s 142(1) dated 18.09.2021 to make compliance by way of submitting the relevant reply along with the documents/papers & other details etc. on E-online. Also the relevant indispensable accounts or documents/papers or other details thereof as mentioned above, are required to be submitted on line electronically in E-proceedings/facility through your account specifiedd in the Annexure to this said notices i.e. In e-filing website (www.incometaxindiaefiling.gov.in). But no complaince was made by the assessee on the above issues. Further Notice u/s 142(1) of I.A.Act, 1961 dated 09.06.2021 along with repeated Notice/reminders Letters together with the relevant letter of Questionnaire/Annexure were issued periodically through departmental E-on line and*

served upon the said assessee within the stipulated time on behalf of the department for making compliance or calling for the details attributable to the verification of the genuineness or authenticity of the aforesaid finding of computation & calculation of the aforesaid issues. As per submissions/details including supporting evidence of available on departmentl E-online Record of ITBA module, NO satisfactory reply is given on behalf of the aforesaid assessee & thus the aforesaid issue remained unexplained/unverified for want of the submission of relevant reply on E-online proceedings during the course of the hearing of the E-online scrutiny proceedings on behalf of the said assessee.

In view of above it is a time barring case & further also I have no alternative but to dispose off well within time. The impugned Assessment Order under Section 143(3) dated 26.02.2015 is erroneous so far as it is prejudicial to the interest of revenue. Henceforth, as per materials & submissions or findings as available on Deptl. E-online record needed or sought for as and when as well as facts together with the circumstances of the aforesaid case, the involvement of escaped or concealed amount of Rs.10,89,84,933/- being chargeable to tax attributable to trading transaction of the purchase and sale of Original UCC & modified UCC-N178 for Rs.69,26,823/- by the Client mode Modification during the corresponding year is finally added back into the total income of the said assessee.

In view of the above narrated facts of the aforesaid case, a show cause was issued on 19.08.2021 to the reason as to why assessment should not be completed as per Draft Assessment Order dated 19.08.2021 for compliance on 25.08.2021.

The said assessee did neither comply within the prescribed time limit as mentioned in the show cause *notice nor any communication was received before the undersigned till date against the above show cause notice assessee has either nothing to say in this regard or have no objection against the Draft Assessment Order and as such I am bound to finalize the Assessment as per information available.*

Total Income of the said assessee is ascertained or determined or assessed afresh as under:-

Total Income : Rs.22,23,080/-
(As per ITR E-filed on 29.03.2013)
Add: Added the Escaped Amount :Rs.69,26,823/-
the involvement of escaped amount of Rs.10,89,84,933/-
being chargeable to tax attributable to trading transaction
of the purchase & sale of Original UCC & modified UCC-N178
for Rs.69,26,823/- by the Client mode Modification during the
corresponding year

Assessed Total Income : Rs.91,49,903/-

Assessed under Section 144/147 of I.T.Act, 1961 on a Total Income at Rs.91,49,903..only. Charge Tax & Interest as per rule. Issue DN & Challan accordingly.

Initiate Penalty proceedings under Section 271(1)(b) & 271 (1)(c) of I.T.Act, 1961".

2. The impugned notice has been passed under Section 147 read with Section 144 of the Income Tax Act afer the petitioner was issued with notice under Section 148 of the Income Tax Act on 23.03.2020. The petitioner appears to have responded to the same. When the petitioner asked the respondent to give reasons for re-opening the assessment, the respondent themselves sent a communication dated 11.03.2021 under Section 143(2) read with Section 147 of the Income Tax Act was issued on 11.03.2021. In the said communication, the space meant for giving reasons had been left blank and has been stated as "NULL".

"The relevant portion of the communication dated 11.03.2021, reads as under:

<u>Notice under section 143(2) read with section 147 of the Income-Tx Act, 1961</u>

Dear Taxpayer,

Thank you for filing your return of income for Assessment Year 2013-14 in response to notice under Section 148 of the Act, vide Ack.no.372718941290620 on 29.06.2020.

2. While acknowledging the care and diligence you have taken in preparing the return, there are certain issues as mentioned below which need further clarification:-

Issues as per reasons recorded for reopening

null

3.In view of the above, you may submit your response with supporting documents (if any) on the above mentioned issues to undersigned electronically in 'E-proceedings' facility through your account in e-Filling website (<u>www.incometaxindiaefilling.gov.in</u>) at your convenience on or before 15.03.2021.

4. In course of assessment proceedings, if required specific questionnaire(s) or requisition(s) for information/document may be issued subsequently

> *5. A brief note on E-proceeding is enclosed for your kind reference. In case you require any assistance in filling your response, you may contact toll free Call Centre number 1800 103 4215."*

3. The learned counsel for the petitioner submitted that the petitioner had sent a response to the same and once again requested to the respondent to give the reasons as to basis on which a sum of Rs.69,26,823/- was sought to be included towards Income. Thereafter, the petitioner was issued with a show cause notice together with the draft assessment order dated 19.08.2021 which has now culminated in the impugned order.

4. At the time of admission itself, this Court had noted the content of the communication dated 11.03.2021, calling upon the petitioner to respond by 15.03.2021. Noting the fact that the aforesaid communication was signed only on 16.03.2021, this Court had come to the *prima facie* conclusion that the aforesaid communication dated 11.03.2021 was uploaded only on 16.03.2021.

5. The impugned order is sought to be assailed by the petitioner on the ground that the basis on which a sum of Rs.69,28,893/- was proposed to be

added was not explained income to the petitioner, even though, the petitioner had sent repeated reminders asking the respondent to furnish an explanation for the basis, on which the aforesaid amount was sought to be added to the taxable income of the petitioner. He further submits that the petitioner responded to the details called for notice issued under Section 142(1) in so far, item nos, 1, 2, 3. In the item nos. 3 & 4, the petitioner has categorically stated as follows:

S.No.3	Please furnish the copy of the bank account through which business of above client code was operated during the period of 01.04.2012 to 31.03.2013.	We hereby inform you that during the year under assessment, assessee was carried out trading of futures and options and we are not able to correlate the turn over mentioned in your letter Rs.69,26,823/- and hence we request you to inform us from where the above amount is taken so that we will be able to provide the information as required by you.
S.No.4	Please furnish the full details of client code mentioned as Original UCC-N 168 and modified UCC- 178 for the period 01.04.2012 to 31.03.2013.	In respect of Q-4, we are unable to find out the client code mentioned as Original UCC-N 168 and modified UCC- 178 for the period 01.04.2012 to 31.03.2013. We request you to provide us the detailed information about the data required so that we will provide you the same.

6. The learned Senior Standing Counsel for the respondents submits that after notice under Section 148 was issued to the petitioner on 23.03.2020, the petitioner was issued with the notice under Section 142(1) of the Income Tax Act on 18.09.2022. However, the petitioner did not

responded to the same. It is submitted that the petitioner was thereafter issued with another notice under Section 142(1) on 09.06.2021 which was also not responded by the petitioner. Hence, show cause notice cum draft assessment order was issued on 19.08.2021. Therefore, the Department was left with no further option, except to pass the impugned assessment order in the absence of proper explanation by the petitioner regarding the income that had escaped assessment for a sum of Rs.69,26,823/-.

7. The learned Senior Standing Counsel further submitted that the petitioner has an alternative remedy before the Appellate Commissioner against the impugned order and therefore on this count also, the present writ petition is liable to be dismissed. He further submitted that the petitioner has not made proper disclosure of income at the time of filing returns under Section 139 of the Income Tax Act, 1961, on 29.09.2013.

8. The assessment that was completed on 26.02.2015 under Section 143(3) and thereafter re-opened, by the issuance of the notice under Section 148 of Income Tax Act on 23.03.2020. It is further submitted that several notice was sent to the petitioner through e-mail and on-line facility.

However, the petitioner did not respond. Therefore, the department was left with no other option except to pass the impugned order based on the available records.

9. Heard the learned counsel for the petitioner and the learned Senior Standing Counsel for the respondents.

10. The petitioner has not specifically asked for response for reopening of assessment in accordance with the decisions of Supreme Court in the case **GKN Driveshafts (India) Ltd Vs ITO, reported in (2003) 259 ITR 19 (SC).** However, the department had itself voluntarily attempted to furnish the reasons vide communication dated 11.03.2021 issued under Section 143(2) of the Income Tax Act read with 147 of the Income Tax. However, the aforesaid communication did not contain any reasons.

11. The impugned order refers to a notice issued on 23.03.2020 followed by another notice under Section 142(1) on 18.09.2021. However, the impugned assessment order is dated 08.09.2021.

12. It indicates that the order has been passed in a hurry to avoid the assessment becoming time barred under Section 153 of the Income Tax Act, 1961. The aforesaid amount of Rs.69,26,823/- has been added without proper reasons an without giving petitioner an opportunity to explain to his stand.

13. In case of *Ajay Ajit Tanna Vs Union India,* reported in [2023] 151 taxmann.com 324 (Bombay), the Bombay High Court held as under:

> *11. Equally settled is the principle of law that the legality of the reassessment proceedings has to be tested on the touch stone of the reasons recorded by the A.O for such reopening. In the present case even when the petitioner had demanded the reasons for reopening the assessment, no such reasons were furnished to the petitioner which was otherwise an obligation cast upon the A.O in terms of the judgment in GKN Driveshafts (India) Ltd. (supra). Interestingly the A.O in the notice under section 143(2) of the Act dated 30th June, 202 has recorded the reasons as 'null' which to our understanding means that there were no reasons at all with the A.O to support his belief that income had escaped assessment for if there were any, the A.O would not have recorded so. Further if at all there were any reasons in fact recorded and available with the A.O, then the same ought to have been furnished to the petitioner in terms of the mandate of the judgment in GKN Driveshafts (India) Ltd.(supra).*

14. The above reasoning applies to the four corners of present case. The impugned order is therefore un-sustainable. The impugned order cannot be explained by way of counter as held by the decision of Hon'ble Supreme Court in **Mohindeer Singh Gill and Another -Vs- The Chief Election Commissioner, New Delhi and Others reported in 1978 SCR(3) 272.**

15. Under these circumstances, the impugned order is set aside and the case is remitted back to the respondent to pass fresh order. The respondent shall furnish details as to the basis on which the aforesaid amount of Rs.69,23,836/- was to be added to the taxable income of the petitioner within a period of 30 days from the date of receipt of a copy of this order. The respondent shall pass orders within a period of 30 days thereafter. The petitioner shall co-operate with the respondent in the assessment proceeding.

16. With the above observation, this Writ Petition is allowed. No costs. Consequently, connected miscellaneous petitions are closed.

01.08.2023

Index : Yes/No
Internet : Yes/No
Speaking Order/Non-Speaking Order
Neutral Citation : Yes/No

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To

1.The Income Tax Officer,
National e-Assessment Centre,
Income Tax Department,
Ministry of Finance,
Room No.401, 2nd Floor, E-Ramp,
Jawaharlal Nehru Stadium,
Delhi – 110 003.

2.The Assistant Commissioner of Income Tax,
Non-Corporate Circle – 5(1),
Aayakar Bhavan,
No.121, Uthamar Gandhi Salai,
Nungambakkam, Chennai – 600 034.

C.SARAVANAN, J.,

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