IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.10.2023

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THE HON'BLE Mr. JUSTICE KRISHNAN RAMASAMY

W.P.No.25657 of 2022
and W.M.P.Nos.24666 & 24669 of 2022

Arcot Loganathan Ravi ... Petitioner

Vs.

Additional/Joint/Deputy/Assistant Commissioner of Income Tax,
Income Tax Officer,
Vellore District – 632 401
National Faceless Assessment Center,
Delhi. ... Respondent

Prayer : Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, to call for the records of the respondent relating to the impugned assessment order vide ITBA/AST/S/144/2021-22/1039832262(1) dated 14.02.2022 for the assessment year 2017-18 and quash the same as illegal, arbitrary and devoid of merit.

For Petitioner : Mr.Salai Varun

For Respondent : Dr.B.Ramasamy
Senior Standing Counsel

ORDER

This writ petition has been filed challenging the Impugned assessment order vide ITBA/AST/S/144/2021-22/1039832262(1) dated 14.02.2022 for the assessment year 2017-18.

2. The petitioner is a fire cracker retailer and during the time of Deepavali i.e., last of week of October 2016, the cash out of sales were deposited in his Bank Account, which was clearly explained. The respondent herein had overlooked the source of income which has been clearly explained in the books of account and treated these deposits as unexplained income under Section 69A of the Income Tax Act, 1961 and unreasonably taxed as at to the tune of 85% and thereby, issued an impugned order 20.12.2019.

3. The said assessment order was passed in violation of principles of natural justice without providing an opportunity. Thereby, the petitioner has filed a writ petition in W.P.No.2750 of 2020 and the same came to be allowed by this Court on 22.06.2021 and held as

follows :-

> *"5. The common issue that arises is violation of the principles of natural justice, wherein, ignoring responses filed by the assessee to the show cause notices issued, the Assessing Authority has simply followed the directions of the Joint Commissioner, Income Tax, in computing the tax liability of the petitioners.*
>
> *6. In the light of the discussion as above, the impugned orders of assessment are set aside and the Writ Petitions allowed. Connected Miscellaneous Petitions are closed. No costs."*

4. By referring to the said order, the learned counsel for the petitioner submitted that the assessment order already made for the assessment year 2017-2018 by virtue dated 20.12.2019 was set aside, therefore, since this Court had not granted any liberty to reopen the said assessment, the respondent cannot reopen the assessment once again. Thereafter, the respondent cannot be proceeded with any further assessment for the year 2017-18.

5. In support of his contention, he relied upon the judgment passed by the Hon'ble Apex Court in ***Sona Builders vs. Union of India and Others*** reported in ***(2001) 10 SCC 280.***

6. Learned counsel for the respondent submitted that originally the writ petition was filed by the petitioner challenging the impugned assessment order for the year 2017-18 and this Court had also come to a conclusion in the said writ petition not annulled by this Court, but only on the ground of violation of principles of natural justice. So, therefore it does not mean that the said order so far not encumber the respondent to proceed further assessment. He further submitted that the respondent is empowered to proceed further by providing opportunity to the respondent. Therefore, the impugned order dated 14.02.2022 came to be passed by the respondent. Even the said assessment order also passed by the respondent after providing opportunities to the petitioner. In such circumstances, the present petition has been filed. He further referred to the judgment of the Hon'ble Apex Court in ***Home Finders Housing***

Limited vs. The Income Tax Officer, reported in ***[2018] 94 taxmann.com 84 (SC).***

7. Learned counsel for petitioner would further submit that initially, the respondent has passed an assessment order on 20.12.2019 and the same was quashed by this Court vide order dated 22.06.2021. While quashing the said order, this Court had not granted any liberty to the respondent to conduct fresh assessment or continue proceedings.

8. He would also submit that the judgment referred by the respondent, wherein the impugned order was set aside and the matter was remitted back to the respondent to pass a speaking order on the objections raised by the petitioner, after giving an opportunity of hearing to them, whereas, in the present case, this Court had quashed the assessment order without remitting the matter back to the respondent. Hence, he would contend that the said impugned order is liable to be quashed.

9. Heard the learned counsel for the petitioner, the learned Senior Standing Counsel for the respondent and also perused the materials available on record.

10. The issue that has to be decided in the present case is as to whether, subsequent to the quashing of the assessment order dated 20.12.2019, the Assessing Officer can once again pass the assessment order for the assessment year 2017-2018. This Court had quashed the assessment order passed by the Authority vide the order passed by this Court in W.P.No.2750 of 2020 dated 22.06.2021 without granting any liberty for re-assessment. However, the contention put forth by the respondent was that according to them, since this Court had quashed the assessment order on the ground of violation of principles of natural justice, they can make a fresh assessment order by providing opportunities of hearing in the absence of any bar in the order passed by this Court dated 22.06.2021.

11. The said contention of the respondent cannot be accepted for a simple reason that whenever an order was is set aside by this Court on the ground of violation of principles of natural, a liberty will be granted by this Court. However, in the present case, no such liberty was granted by this Court. The Hon'ble Supreme Court had also dealt with a similar issue in ***Sona Builders vs. Union of India and others*** *(cited supra)* wherein, it has been held as follows :-

> *"5. There is no doubt in our minds that on both counts there has been a gross breach of the principles of natural justice because adequate opportunity to meet the case made out in the notice was not given to the appellant.*
>
> *6. Having regard to the statutory limit within which the Appropriate Authority has to act and its failure to act in conformity with the principles of natural justice, we do not think we can remand the matter to the Appropriate Authority. We must set its order aside."*

12. In the above case also, there was a violation of principles of natural justice and hence, the order was set aside. However, when a submission was made for remit back the matter, the Hon'ble Supreme

Court had specifically refused to remit the same. Therefore, whenever the Court quashed an order without granting any liberty, it would be construed that the order under challenge has been quashed once for all without providing any scope for re-opening the same.

13. In such view of the matter, passing the assessment order subsequent to the quashing of previous assessment order is not in accordance with law. Hence, the impugned order is liable to be quashed.

14. In the result, this Writ Petition stands allowed. Accordingly, the impugned assessment order ITBA/AST/S/144/2021-22/1039832262(1) dated 14.02.2022 passed by the respondent is quashed. No costs. Consequently, the connected miscellaneous petitions are also closed.

11.10.2023

Speaking/Non-speaking order
Index : Yes / No
Neutral Citation : Yes / No
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To

The Additional/Joint/Deputy/Assistant Commissioner of Income Tax,
Income Tax Officer,
Vellore District – 632 401
National Faceless Assessment Center,
Delhi.

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