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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.10.2023
Coram

The Honourable **Mr.Justice Krishnan Ramasamy**

W.P.Nos.29455, 29019 and 29021 of 2023
and
W.M.P.Nos.29074, 28602 and 28596 of 2023

1. Prakash Haney Sakraney ...Petitioner in W.P.No.29455 of 2023
2. Ishan Anoop Sakraney ...Petitioner in W.P.No.29019 of 2023
3. Gulab Madhavdas Assomal ...Petitioner in W.P.No.29021 of 2023

Vs.

Assistant Commissioner of Income Tax
International Taxation Circle- 2 (2) Chennai,
No.16, Greams Road, Chennai – 600 006.

...Respondent in all W.Ps.

Writ Petition No.29455 of 2023 filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus to call for records and to quash the impugned order passed by the respondent in PAN APNPS1208N in DIN & Letter No.ITBA/COM/F/17/2023-24/1056547627(1) for the assessment years 2006-07 to 2015-16 dated 26.09.2023.

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Writ Petition No.29019 of 2023 filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus to call for records on the file of the respondent in PAN BPEPS2632N in DIN & Letter No.ITBA/COM/F/17/2023-24/1056533115(1) for the assessment years 2006-07 to 2015-16 dated 26.09.2023 relating to the application made by the petitioner for stay of recovery demand by treating the petitioner as Agent (representative assessee) of M/s.Watanmal Boolchand and Company Ltd., and to quash the same and consequently, to direct the respondent to not to treat the petitioner as an assessee in default pending disposal of this Writ Petition.

Writ Petition No.29021 of 2023 filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus to call for records on the file of the respondent in PAN AAAPA7852J in DIN & Letter No.ITBA/COM/F/17/2023-24/1056548729(1) for the assessment years 2006-07 to 2015-16 dated 26.09.2023 relating to the application made by the petitioner for stay of recovery of demand by treating the petitioner as Agent (representative assessee) of M/s.Watanmal Boolchand and Company Ltd., for the assessment year 2006-07 to 2015-16 and to quash the same and consequently, to direct the respondent not to treat the petitioner as an assessee in default pending disposal of this Writ Petition.

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For Petitioner in all W.Ps. : Mr.P.S.Raman,
Senior Counsel for Mr.R.Sivaraman

For Respondent in all W.Ps. : Mr. B.Ramana Kumar
Senior Standing Counsel

COMMON ORDER

The challenge in all these Writ Petitions is to the orders passed by the respondent, Assistant Commissioner of Income Tax, International Taxation Circle 2(2), Chennai, dated 26.09.2023.

2. Since a common issue arises for consideration in all these Writ Petitions, they were heard together and disposed of by this Common Order.

3. For the sake of brevity and conciseness, W.P.No.29455 of 2023 is taken as a lead case and it would be suffice to note the facts stated thereunder :-

i) The Company, named 'M/s.Watanmal Boolchand and Company' is a Foreign Company incorporated in Hong Kong in the year

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1948. The said WBC Company was carrying on business of import and export of general merchandise. Subsequently, the said Company entered into Food Market segment in various categories and did trading in both branded and unbranded products. The petitioner was appointed as Director of the said Company from 02.08.2002 till 14.05.2009 and again re-appointed as Director on 04.01.2012. Another Company, named 'Watanmal India Pvt. Ltd.' (WIPL) was incorporated in India in the year 2003. Both the said Companies, viz., WBC and WIPL were associated Enterprises, however, WBC does not have any permanent establishment in India or any operations in India.

ii) On 14.03.2013, a survey was conducted at the business premises of WIPL situated in Chennai; that during the course of survey operations, various evidences were collected which went on to prove that the sites of management and control of WBC is in India; that a report was filed to that effect and that based on such report, the Assessing Officer of WBC had concluded that all the business were carried on by WIPL on behalf of WBC, and therefore, according to him, WIPL is dependent agent

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of WBC.

iii) Thereafter, a notice under Section 148 I.T.Act was issued in the case of WBC for AYs 2006-07 to 2015-16 against which, WBC filed Writ Petitions seeking to quash the said notice and this Court issued directions to the Assessing Officer to proceed with the re-assessment proceedings. Challenging the said order passed by this Court, WBC filed Writ Appeals and the same are pending before the Division Bench of this Court. However, pursuant to the direction issued by this Court permitting the Assessing Officer to proceed with the re-assessment proceedings, the Assessing Officer passed Draft Assessment Orders for Ays 2006-07 to 2015-16. Challenging the Draft Assessment Orders, WBC filed objections before the Hon'ble **D**ispute **R**esolution **P**anel ('DRP') and DRP upheld the Draft Assessment Orders, pursuant thereto, the Assessing Officer passed Final Assessment Orders. Aggrieved by the Final Assessment Orders, WBC filed Appeals before the Income Tax Appellate Tribunal.

iv) The proceedings initiated against WBC in respect of AYs 2006-07 to 2015-16 are pending by way of Appeals before Division Bench of this

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Court as well as Tribunal. At this juncture, the respondent-Department is seeking to recover the disputed demand by treating the petitioner as an Agent (representative Assessee) under Section 163 (1) I.T.Act and issued a show cause notice, to which, the petitioner submitted their reply and the respondent, without even providing an opportunity of personal hearing, passed the impugned order dated 26.09.2023. Aggrieved by the same, the present Writ Petitions are filed challenging the impugned orders on following grounds:-

> i) The impugned orders treating the petitioners as Agent of WBC under Section 163 (1) I.T.Act is against law and suffers from violation of principles of natural justice.
>
> ii) The show cause notice is bad in law as it does not fulfill essential requirements under Section 163 (1) read with 163 (1) (i) to issue a valid notice.
>
> iii) The impugned orders suffer from want of jurisdiction.

4. Mr.P.S.Raman, learned Senior Counsel representing for Mr.R.Sivaraman, learned counsel for the petitioners would submit that the

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petitioners have challenged the orders passed by the respondent on the principle ground that no opportunity of personal hearing has been provided to the petitioner before passing the impugned orders. The learned Senior Counsel would submit that, proceedings under Section 163 (1) was initiated against the petitioners and show cause notices dated 06.09.2023 were issued, whereby, the petitioners were required to submit their responses on or before 13.09.2023 and though the petitioners filed their reply on 18.09.2023, and in the said replies, they sought for further time to file detailed replies and also made a request for providing an opportunity of personal hearing before taking final decision, the respondent, without granting any opportunity, passed the impugned orders by treating the petitioners as Agents (representative assessees) of WBC.

4.1 The learned Senior Counsel further submitted that in terms of Section 163 (2) of I.T. Act, ***"no person shall be treated as the agent of a non-resident unless he has had an opportunity of being heard by the Assessing Officer as to his liability to be treated as such."*** whereas, in the present, the petitioners were treated as Agents and proceedings were

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initiated in terms of Section 163 (1) and impugned order came to be passed, without providing opportunity of personal hearing to the petitioners. Therefore, the learned Senior Counsel that the impugned orders suffers from gross violation of principles of natural justice.

5. Per contra, Mr.B.Ramana Kumar, learned Senior Standing Counsel for the respondent would submit that the respondent-Department have already provided opportunity of personal hearing and since in the said show cause notices, the petitioners were called upon to explain as to why, they should not be treated as Agents (representative assesseees) of WBC and were required to submit their response by appearing either in person or through authorized representative on or before 13.09.2023 and on the said hearing date, i.e. 13.09.2023, the petitioners have failed to appear and filed their replies only on 18.09.2023, i.e. after the expiry of the date fixed for hearing and filing reply, and hence, the respondent, taking into consideration of the replies filed by the petitioners proceeded to pass the impugned orders. Therefore, the learned Senior Standing Counsel would submit that the petitioners having failed to utilize the opportunity given to

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them, cannot be make hue and cry stating that no opportunity of personal hearing was given. However, the learned Senior Standing Counsel fairly submitted that after the receipt of reply from the petitioners no opportunity of personal hearing was provided to them.

6. I have given due consideration to the submissions made by the learned Senior Counsel for the petitioners and learned Senior Standing Counsel for respondent and perused the materials available on record.

7. The case of the petitioners is that though they are the Directors of WBC, which is a Foreign Company, they are not Agents of the said Company. However, proceedings under Section 163 (1) were initiated against the petitioners by treating the petitioners as Agents (representative Assessees) of WBC, and show cause notices dated 06.09.2023 were issued calling forth reply from the petitioners on or before 13.09.2023, and the petitioners filed their reply on 18.09.2023, seeking for further time to submit a detailed reply and to afford an opportunity of personal hearing, however, the respondent, without considering such request, passed the

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impugned orders.

8. According to the learned Senior Standing Counsel for the respondent-Department, even at the time of issuance of show cause notices dated 06.09.2023, the petitioners were provided an opportunity of personal hearing, since by virtue of the show cause notices, the petitioners were called upon to appear in person and explain as to why, they should not be treated as Agents and also to file their reply on or before 13.09.2023 and it is the petitioners, who failed to utilize the opportunity granted to them, and therefore, the respondent cannot be blamed.

9. Per contra, it is the contention of the learned Senior Counsel for the petitioner that no opportunity of personal hearing was afforded to the petitioners before passing the impugned orders and the show cause notice calling upon the petitioners to appear in person along with reply cannot be deemed to be notice providing opportunity of personal hearing.

10. On perusal of the show cause notices dated 06.09.2023, it is

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seen that the petitioners were required to file reply on or before 13.09.2023 and though by virtue of the said notice dated 06.09.2023, the petitioners were called upon to appear in person, that could not be treated as notice providing an opportunity of personal hearing to the petitioners, since the question of provision of opportunity of personal hearing would come into picture only after the petitioners files their replies to such notices. Further, the petitioners, in response to the show cause notices have hastily filed their replies, of course, belatedly on 18.09.2023, since they have not been given sufficient time to file their reply, and the petitioners, in their replies have made a specific request for providing further time to file a detailed reply (since they have to collate certain informations to buttress their contentions) and also to afford an opportunity of personal hearing before passing final orders. However, the respondent, without considering such request, straightaway passed the impugned orders on 26.09.2023, and in the said impugned orders, the replies filed by the petitioners were also considered and discussed.

11. When the respondent-Department had initiated proceedings

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under Section 163 (1) of I.T. Act, by treating the petitioners as Agents of WBC, they ought to have provided an opportunity of personal hearing to the petitioners, since, in terms of Section 163 (2), provision of personal hearing is mandatory. As rightly pointed out by the learned Senior Counsel for the petitioner, the show cause notices issued by the respondent-Department requiring the petitioners to appear in person and file their replies could be deemed to be a notice providing an opportunity of personal hearing, since, by means of show cause notice, the petitioner can only be expected to file reply or objections to the query or any other issues raised in the show cause notices, and though even by means of such show cause notice, petitioners have been called upon to appear in person along with reply, that would be only for the purpose of enabling the Officer to arrive at a preliminary conclusion and thereafter, the Assessing Officer has to ascertain the facts with regard to the genuineness of documents, if any, produced by the Assessee, for which purpose, the assessee has to be heard. However, I find that, in the instant case, the petitioners have not been heard before passing the impugned orders and this is sufficient to hold that the impugned orders are unsustainable in the eye of law.

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12. Accordingly, this Writ Petitions are allowed, the impugned orders are set aside and the matters are remanded back to the respondent for re-consideration, in which case, the respondent shall provide an opportunity of personal hearing to the petitioners by fixing a specific date for hearing and in the event, the petitioners have to file any additional supportive documents the same shall be filed in advance and thereafter, they shall appear before the respondent and the respondent after perusing the documents and after hearing the petitioner in full shall pass orders in accordance with law.

13. It is made clear that this Court, taking into consideration of the peculiar facts and circumstances of the case, where, the impugned orders are passed in gross violation of principles of natural justice, which is apparent on the face of record and bearing in mind that the interest of both the petitioner and the Revenue has to be safeguarded, has passed this order.

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14. After this Court passed an order, it is brought to the notice of this Court by the learned Senior Standing Counsel for the respondent that the issue relating to the initiation of proceedings under Section 148 against WBC pertains to 10 assessment years, viz.,AY 2006-07 to 2015-16, and so far as the present case is concerned, it pertains to only three Assessment Years, and the respondent intends to issue notice under Section 163 (1) of I.T.Act, in respect of other assessment years, where, the scope of the Act was accepted, and therefore, prayed that the impugned orders are liable to be aside only in respect of show cause notices issued concerning three assessment years.

15. In view of the above, it is made clear that the respondent shall consider the issue only in relevance to the show cause notices issued pertaining to three assessment years, which culminated in the orders impugned herein.

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16. In the result, the Writ Petitions are allowed, as stated above. No costs. Consequently, connected Writ Miscellaneous Petitions are closed.

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Index : yes/no
Neutral Citation : yes/no

To

Assistant Commissioner of Income Tax
International Taxation Circle- 2 (2) Chennai,
No.16, Greams Road, Chennai – 600 006.

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Krishnan Ramasamy,J.,

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