BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **17.04.2023**

CORAM

THE HONOURABLE Ms.JUSTICE **P.T.ASHA**

W.P.(MD) No.8707 of 2023
and
W.M.P.(MD) No.7986 of 2023

M/s.Senthil Murugan Jewellers,
represented by its Partner Pandurengan,
253A, 254, 255, West Masi Street,
Madurai 625 001. ... Petitioner

/vs./

The Assistant Commissioner,
Office of Assistant Commissioner of Income Tax,
Central Circle (1),
Income Tax Staff Quarters Complex,
Kulamangalam Main Road,
Meenambalpuram,
Madurai 625 002. ... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari, calling for the records in PAN No.ABMFS6863J and DIN No.ITBA/AST/S/153 C/2022-23/1051715155(1) dated 30.03.2023 for the assessment year 2018-2019 on the file of the respondent and quash the same as arbitrary, unreasonable and against the principles of natural justice.

For Petitioner : Dr.A.Thiagarajan Senior Counsel for S.Karunakar

For Respondent : Mr.N.Dilipkumar Senior Standing Counsel

ORDER

The writ petition has been filed challenging the order passed by the respondent in his proceedings in Pan.No.ABMFS6863J and Din No.ITBA/AST/S/153 C/2022-23/1051715155,(1) dated 30.03.2023 and quashing the same.

2.The facts preceding the filing of the writ petition are as follows:-

3.The petitioner is running a jewelry business as a partnership firm. They are assessees on the file of the respondent and had also registered themselves as a dealer under the Tamil Nadu Goods and Services Act, 2017 and Central Goods and Service Act, 2017. It is their case that for the assessment year 2018-2019, they had filed their return of income and the assessment was completed as per

Section 143(3) of the Act on 10.02.2019, wherein a total income of Rs.5,92,267/- was declared.

4.It appears that on 10.11.2020, a search was conducted under Section 132 of the Income Tax Act at the premises of M/S.Mohanlal Jewelers (P) Ltd, Shri Suresh Kumar Khatri and others at the office located at Kondithope, Chennai. During the search, certain incriminating materials relating to the petitioner firm and other dealers were seized by the respondent and based on this search, it was found that the group had been using a customized software, called 'J PACK' solely for the purpose of recording the unaccounted gold and cash transactions carried on by M/S.Mohanlal Jewellers with others. Two years thereafter the petitioner by their letter dated 02.12.2022 were informed that as per the Notification Order No. 46/2022-23 of the Principal Commissioner of Income Tax, Madurai -1, the case had been centralized to the Assistant Commissioner of Income Tax, Central Circle -1, Madurai. The notices under Sections 143(2) and 142(1) dated 18.01.2023 and 24.02.2023 respectively were issued and based on the investigation of the pen-drives and other incriminating documents, the respondent had come to the conclusion that the ledger named 'PANDU MD' relates to the petitioner firm.

5.The petitioner would submit that by notice dated 04.03.2023, they were asked to produce the books of accounts, documents and the details of the purchase as shown in the trading accounts for the assessment year 2018-2019 along with the ledger containing the date wise and party wise details. It is the case of the petitioner that they are in noway connected with the alleged entries and further in answer to the show cause notice dated 14.03.2023, they had filed a detailed objection denying the fact that 'PANDU MD' related to the petitioner. The petitioner would submit that solely relying upon the self serving statement made by a third party, proceedings have been initiated upon them. Further, the proceedings have been initiated without affording an opportunity to the petitioner to rebut the presumption and also they had not been given the copies of the documents, based upon which the proceedings have been initiated and orders were passed thereon. Therefore, since the order has been passed by flouting the principles of natural justice, the petitioner is before this Court.

6.Mr.A.Thiagarajan, learned Senior Counsel assisted by Mr.S.Karunakar, learned counsel appearing on behalf of the petitioner would submit that the entire order has been pronounced on the basis of some third party's documents, which has been created by the third party and not by the petitioner. Further, the petitioner has not been given any opportunity to rebut the statements made by these third parties by cross-examining them. He would therefore contend that the principles of natural justice have been totally given a go-by.

7.He would submit that since proper opportunity has not been given to the petitioner, the petitioner need not avail the alternate remedy and can straight away approach this Court exercising the jurisdiction of this Court under Article 226 of the Constitution of India. He, in support of his contention, would rely upon the following judgments:-

> *"i) In Civil Appeal No.1155 of 2021* ***(M/s.Radha Krishan Industries Vs. State of Himachal Pradesh and Others)*** *dated 20.04.2021.*
>
> *ii) In Civil Appeal No.5121 of 2021* ***(The Assistant Commissioner of State Tax and Others Vs. M/s. Commercial Steel Limited)*** *dated 03.09.2021.*
>
> *iii) In Civil Appeal No.4228 of 2006* ***(M/S.Andaman Timber Industries Vs. Commissioner of Central Excise, Kolkata-II)*** *dated 02.09.2015.*

iv) In W.P.(MD) Nos.11379 to 11382 and 13608 to 13614 of 2021 ***(K.Sugumar and others Vs. The Commissioner of Customs, (Preventive), No.1, Williams Road, Cantonment, Tiruhcirappalli 620 001 and another)*** *dated 07.10.2021.*

v) In ***H.R.Mehta Vs. Assistant Commissioner of Income Tax*** *reported in* ***(2016) 387 ITR 561 (Bom).***

vi) In Civil Appeal No.5393 of 2010 ***(M/S. Godrej Sara Lee Limited Vs. The Excise and Taxation Officer cum Assessing Authority and others)*** *dated 01.02.2023.*

vii) In W.A.Nos.2222, 2226, 2229 and 2242 of 2021 ***(M/s.All India Metal and Alloys, represented by its Proprietor, No.17, Singanna Naicken Street, First Floor, Chennai 600 001 Vs. The Assistant Commissioner, Harbour IV Assessment Circle, Chennai)*** *dated 08.09.2021."*

8.*Per contra*, Mr.N.Dilipkumar, learned Senior Standing Counsel appearing on behalf of the respondent would submit that a mere perusal of the impugned order would clearly show the opportunities that have been extended to the petitioner to submit their objections and further the document, based upon which the impugned order has been passed, was a software, which is also made available for the petitioner's scrutiny. Further, the request for cross-examination has also been extensively considered in the impugned order. The learned Senior Standing Counsel would further submit that a perusal of the impugned order would show how some of the entries in the 'J PACK' have been tallied with the entries in the petitioner’s ledger book, which will prove the connection between the petitioner and the said 'PANDU MD'.

9.He would submit that the petitioner has an alternate remedy in the form of an appeal under Section 246A of the Income Tax Act. They can always move the appellate Court and in case, they are able to establish that the non-examination of the witnesses has been seriously prejudiced their case, they can always seek a remand from the appellate authority. However, this Court exercising under Article 226 of the Constitution of India cannot go into the correctness or otherwise of the order.

10.He would rely upon the judgment of the Hon'ble Supreme Court in ***Income Tax Officer Vs. M.Pirai Choodi*** reported in ***(2010) 15 Supreme Court***

Cases 283, wherein the Hon'ble Supreme Court had observed that although they were of the opinion that the assessee should be given a right to cross-examine the witness concerned, they had been clear about the fact that the assessee should have moved in appeal to CIT (Appeals) and without availing the statutory remedy, the petitioner cannot approach the High Court directly to have the impugned order quashed.

11.Heard the learned counsels appearing on either side.

12.As rightly pointed out by the learned Senior Standing Counsel for the respondent, a mere perusal of the impugned assessment order would clearly show that the authority below has taken into consideration the defenses raised by the petitioner herein and on a comparison of the ledger of the petitioner with the ledger maintained by M/S.Mohanlal Jewelers (P) Ltd, the nexus between the two has been set out in the tabulated statement in paragraph No.8.1 of the impugned order. The impugned order also goes on to state that some of the entries in the 'J PACK' does not find place in the ledger of the petitioner. The respondent has considered each of the submissions made, particularly, the defense with reference to the plea for cross-examination and had passed the order. Therefore, it cannot be stated that the order is a non-speaking one. The petitioner has also appeared for an enquiry before the concerned authority.

13.Therefore, in all fairness and relying upon the judgment of the Hon'ble Supreme Court in ***(2010) 15 Supreme Court Cases 283,*** interests of justice require that the petitioner invokes the alternate remedy available to him, which is an effective alternative remedy. All the contentions raised now before this Court can very well be agitated by the petitioner before the appellate authority.

14.In the light of the above, the Writ Petition stands dismissed. However, there shall be no order as to costs. It is open to the petitioner to move the appellate authority. Consequently, connected Miscellaneous Petition is closed.

17.04.2023

Speaking : Yes / No
NCC : Yes / No
Internet : Yes / No
Index : Yes / No

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P.T.ASHA, J.

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