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W.P. No.10721 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.03.2024

CORAM

THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P. No. 10721 of 2021 and
W.M.P. Nos.11364, 11365 and 19290 of 2021

Varadarajaperumal Pradeepkumar,
No.1109 Block 63,
VOC Nagar, Tondiarpet,
Chennai 600 081.

..Petitioner

Vs.

The Income Tax Officer,
Non – Corp, Ward 5(4) Che,
Chennai.

..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 in his proceedings in DIN & Order No.ITBA/AST/S/143(3)2019-20/1023396110(1), quash the assessment order dated 29.12.2019 made therein.

For Petitioner : Mr.P.V.Sudakar

For Respondent : Mr.B.Ramaswamy
Senior Standing Counsel



W.P. No.10721 of 2021

WEB COPY

ORDER

The present writ petition is filed challenging the impugned order dated 29.12.2019 for the assessment year 2017-18.

2. During the relevant assessment year the petitioner carried on business as a distributor of M/s.Bharathi Telemedia Ltd. of its Direct to Home (DTH) services, under the name and style of M/s.Accurate Enterprises, a proprietary concern. During the financial year 2016-17, the Central Government brought out the Specified Bank Notes (Cessation of Liabilities) Ordinance, 2016 on 08.11.2016, cancelling the legal tender status of Rs.1000 and Rs.500 denomination currency notes with effect from 31.12.2016. The Central Government enabled exchange of Demonetized Currency Notes between 09.11.2016 and 30.12.2016 in Banks and Post Offices. For the assessment year 2017-18, corresponding to the Financial Year 2016-17, the petitioner filed its return of income under the Income Tax Act, on 01.11.2017. The petitioner's case was selected for Complete Scrutiny under CASS for the assessment year 2017-18. A notice dated 30.07.2019 was issued by the respondent under Sec. 142(1) of the Income Tax Act, calling upon the petitioner to furnish



W.P. No.10721 of 2021

WEB COPY

Balance Sheet, Profit & Lost account, assessment orders passed under the Income Tax Act for the last three years, details of the various Bank Accounts maintained during the financial years 2015-16 and 2016-17, Bank statements, etc.

2.1. The petitioner appeared before the respondent on 22.08.2019 and furnished copies of purchase / sales books / accounts for 2015-16 and 2016-17, apart from details of Bank accounts in the name of M/s.Accurate Enterprises and in the name of the petitioner. The petitioner appeared before the respondent on 10.12.2020. The petitioner was required to furnish statements of the cash deposit effected during the financial year 2016-17, in the bank account standing in the name of M/s.Accurate Enterprises and in the name of the petitioner with specific reference to cash deposits of demonetized currency during the period 09.11.2016 to 30.12.2016. The respondent also sought for explanation in relation to a Current Account No.101697440267. It is submitted that the petitioner appeared before the respondent on 23.12.2020 and submitted statements of cash deposit in the above two accounts namely M/s.Accurate Enterprises and the account in the name of the petitioner.



W.P. No.10721 of 2021

WEB COPY

3. On 17.03.2021, the petitioner was served with an intimation under Sec.245 of the I.T. Act informing that the refund for assessment year 2020-21 is proposed to be adjusted against an outstanding demand. The petitioner then approached the respondent to enquire the reasons / basis for the adjustment demand. The petitioner was informed that an assessment order dated 29.12.2019 was passed for the assessment year 2017-18 and taxes dues in terms thereof was adjusted. When the respondent was questioned about the service of the order, it was informed that the assessment order was sent to the petitioner's Chartered Accountant's mail address, a copy of impugned order of assessment was handed over to the petitioner. The petitioner on perusal of the assessment order dated 29.12.2019 found that the respondent based on alleged information concluded that the petitioner had made cash deposits of a sum of Rs.4,22,84,000.00/- from midnight of 08.11.2016 to 30.12.2016 in the account held with State Bank of India, MKB Nagar Branch, Chennai – 39, which was treated as unexplained income and assessed under the Head “Income from Other Sources” in terms of Section 69 of



W.P. No.10721 of 2021

WEB COPY

the Income Tax Act. Enquiries with the Chartered Accountant revealed that the said e-mail address is not in use for a long time.

4. The challenge to the impugned order is *inter-alia* on the following grounds viz.,

a) Show cause notice dated 17.12.2019 though it is titled show cause notice, is really not in the realm of show cause notice for it does not contain any proposal but clearly reflects predetermination on the part of the respondent which would be evident from the fact that it has been conclusively found that the sale of the Equity Share would amount to unexplained income and taxed accordingly.

b) The impugned order dated 29.12.2019 was served only on the Chartered Accountant who had failed to communicate the same to the petitioner. The petitioner became aware of the impugned assessment order only when the petitioner was served with an intimation dated 17.03.2021 under Section 245 of the Act proposing adjustment of the refund due to the petitioners with regard to the liability for the assessment year 2017-18. At no point of time in the course of assessment



W.P. No.10721 of 2021

proceedings relating to 2017-18, Chartered Accountant had accompanied the petitioner before the respondent nor his e-mail address furnished for service of assessment order. Therefore the alleged service of the assessment order to the e-mail address of petitioner Chartered Accountant is invalid.

c) Importantly, it was submitted that one of the Bank Accounts viz., Current Account No.101697440267 of State Bank of India, MKB Nagar Branch, Chennai-39, which has been treated as unexplained income in the hands of the petitioner does not relate to the petitioner instead the said account is related to the Electricity Board. Thus, the impugned order of assessment suffers from error apparent on the face of the record.

5. To the contrary, the learned counsel for the respondent would submit that it is the address of the Chartered Accountant which is found in the assessee profile in the portal and therefore one cannot find fault with the service of the notice as well as the assessment order.



W.P. No.10721 of 2021

WEB COPY

5.1. Further, even prior to the notice dated 17.12.2019 there were notices issued under Section 143(2) and only in view of the fact that the petitioner had not responded that the present show cause notice dated 17.12.2019 was issued in the manner in which it was done followed by the passing of the impugned order.

5.2. To appreciate the submission of the petitioner that the Show Cause Notice and the consequential order of assessment suffers from the vice of pre-determination, it would be relevant to extract the show cause notice which reads as under :

“It is noticed from the database of the department there exist an amount of Rs.4,22,83,715 and sale of equity share is Rs.37,000/- since there is no explanation offered why the same should not treated unexplained investment for the relevant period under consideration and taxed accordingly.”

5.3. From a reading of the above show cause notice it appears to me that though titled as Show Cause Notice the submission of the learned counsel for the petitioner that it is really not in the realm of show cause notice but one where it suffers from the vice of pre-determination has merit. Any order which suffers from the vice of pre-determination is arbitrary and would thereby fall foul of Article 14 of the Constitution of



India. In this regard, it may be relevant to rely on the judgment in the case of *Siemens Ltd v. State of Maharashtra and others* reported in (2006) 12 SCC 33, wherein, it was held that whenever there is a demand, the same may no longer be in the realm of notice and would suffer from the vice of pre-determination. The relevant portions reads as follows:

"9. Although ordinarily a writ court may not exercise its discretionary jurisdiction in entertaining a writ petition questioning a notice to show cause unless the same inter alia appears to have been without jurisdiction as has been held by this Court in some decisions including *State of Uttar Pradesh v. Brahm Datt Sharma and Anr.* AIR 1987 SC 943, *Special Director and Another v. Mohd. Ghulam Ghouse and Another*, (2004) 3 SCC 440 and *Union of India and Another v. Kunisetty Satyanarayana*, 2006 (12) SCALE 262], but the question herein has to be considered from a different angle, viz, when a notice is issued with pre-meditation, a writ petition would be maintainable. In such an event, even if the courts directs the statutory authority to hear the matter afresh, ordinarily such hearing would not yield any fruitful purpose [See *K.I. Shephard and Others v. Union of India and Others* (1987) 4 SCC 431 : AIR 1988 SC 686]. It is evident in the instant case that the respondent has clearly made up its mind. It explicitly said so both in the counter affidavit as also in its purported show cause.

10. The said principle has been followed by this Court in *V.C. Banaras Hindu University and Ors. v. Shrikant*, stating:

"48. The Vice Chancellor appears to have made up his mind to impose the punishment of dismissal on the Respondent herein. A post decisional hearing given by the High Court was illusory in this case.

49. In *K.I. Shephard & Ors. etc. etc. v. Union of India & Ors.* [AIR 1988 SC 686], this Court held :

"It is common experience that once a decision has been taken, there is tendency to uphold it and a representation may not really yield any fruitful purpose."



WEB COPY



W.P. No.10721 of 2021

11. A bare perusal of the order impugned before the High Court as also the statements made before us in the counter affidavit filed by the respondents, we are satisfied that the statutory authority has already applied its mind and has formed an opinion as regards the liability or otherwise of the appellant. If in passing the order the respondent has already determined the liability of the appellant and the only question which remains for its consideration is quantification thereof, the same does not remain in the realm of a show cause notice. The writ petition, in our opinion, was maintainable."

6. Further, the show cause notice does not even indicate the time limit within which the assessee / petitioner is required to respond to the same. The show cause notice is bad the order of assessment thus stands vitiated.

7. At this stage, the learned Senior Standing Counsel for the Respondent would submit that cost must be imposed to the petitioner, which was agreed to by the counsel for the petitioner.

8. Considering the submissions of both sides and the facts of the case, this Court is inclined to set aside the impugned order. The petitioner shall submit its objection within a period of 8 weeks from the date of receipt of a copy of this order by treating the assessment order as show cause notice. The Respondent shall thereafter proceed to complete



W.P. No.10721 of 2021

the assessment in accordance with law. If the objections are not filed within 8 weeks from the date of receipt of a copy of this order, the impugned order of assessment dated 29.12.2019 shall stands restored.

9. The writ petition is disposed of on the above terms. No Costs.

Consequently, connected miscellaneous petitions are closed.

06.03.2024

Speaking (or) Non Speaking Order

Index: Yes/No

Neutral Citation: Yes/No

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W.P. No.10721 of 2021

WEB COPY

To:

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WEB COPY



W.P. No.10721 of 2021

MOHAMMED SHAFFIQ, J.

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