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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 28.10.2024

Coram

The Hon'ble Mr.Justice Krishnan Ramasamy

W.P.No.9730 of 2024
and
W.M.P.Nos.10765 & 10767 of 2024

Mohamed Hussain ...Petitioner

Vs.

1. National Faceless Assessment Center,
   Income Tax Department,
   Ministry of Finance,
   Government of India,
   New Delhi-2.
2. Assistant Commissioner of Income Tax,
   Non-Corporate Ward 4,
   BSNL Building,
   Greams Road,
   Chennai 600 006. ... Respondents

Prayer: This Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari, calling for the records of the 1st respondent in PAN:AAXPH5147G and DIN ITBA/AST/S/143(3)/2023-24/1062585888(1) dated 13.03.2024 relating to the Assessment year 2022-23, and quash the same as illegal and arbitrary.

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For Petitioner : Mr.A.Chandra Sekaran
For Respondents : Dr.B.Ramaswamy
Senior Standing Counsel

ORDER

The present Writ Petition is filed challenging the assessment order dated 13.03.2024 passed by the first respondent relating to the assessment year 2022-2023.

2. The learned counsel for the petitioner submitted that the petitioner is purchasing the materials from M/s.J.M.Jain LLP, New Delhi. A search operation was carried out in the premises of M/s.J.M.Jain LLP, New Delhi, and based on the search conducted by the first respondent on 22.05.2022, the proceedings were initiated against the petitioner, on the premise that certain documents were seized and the statement was recorded against the petitioner from the employees of M/s.J.M.Jain LLP, New Delhi. Further, he submitted that none of the documents seized from M/s.J.M.Jain LLP, New Delhi, which the respondent relied upon against the petitioner and also the statement recorded against the petitioner from the employees of M/s.J.M.Jain LLP, New Delhi, have ever been provided to the petitioner. Without providing those documents, the impugned order came to be passed by the first respondent, which resulted in

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violation of principles of natural justice.

3. Dr.B.Ramaswamy, learned Senior Standing Counsel appearing for the respondents submitted that all those documents have been provided to the petitioner including the statement of the employees of M/s.J.M.Jain LLP, New Delhi. Reliance was also placed to the assessment order, particularly page no.46 of the Assessment Order. The same is extracted hereinunder:

> "In this regard, after careful consideration of the reply of the assessee it is found that there is no force in the submission of the assessee as the full contents of the documents seized during the search in the premises of M/s J.M.Jain LLP has already been provided to the assessee. Further, the copy of his ledger account provided by M/s J. M. Jain LLP cannot be relied upon as during the search operation the parellel books of accounts were found, which were maintained on the JSK server, this fact was also confronted to the assessee during the course of assessment proceeding. The request of the assessee for cross examination of the person, on the basis of whose statement the said variation is proposed, is not acceptable as the right of cross examination is not an absolute right. (Nath International Sales vs. UOI, AIR 1992 (Del) 295). The Hon'ble Supreme Court has also held that the right of hearing does not necessarily include right of cross examination. The right of cross examination must depend upon the circumstances of each case and also on the statute concerned (State of J&K vs. BakshiGulam Mohammad AIR 1967 SC 122). The question whether the assessee is entitled to cross examination is a question which may largely depends on the facts and circumstances of the case (ef. Shyamlal Biri Merchant vs. UOI (1993) 68 ELT 648, 551(All) In the present case, no such circumstances are warranted as in the documents seized from the premise of M/s J.M. Jain LLP contains the name and address of the assessee, further the group has categorically admitted to have received the cash amount from the assessee for unaccounted purchases."

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4. By referring above, the learned Senior Standing Counsel submitted that furnishing of the documents to the petitioner has already been recorded. Therefore, the contention of the petitioner that the respondents has not provided the documents is not acceptable. However, he fairly submitted that, if this Court directs the respondents to provide all the documents to the petitioner, which were seized from the premise of M/s.J.M.Jain LLP, New Delhi, the same will be complied with.

5. Heard the learned counsel for the petitioner as well as the learned Senior Standing Counsel for the respondents and also perused the materials available on record.

6. The dispute is with regard to the non-furnishing of the documents which were seized from the premise of M/s.J.M.Jain LLP, New Delhi, relied upon against the petitioner and also the statement recorded from the employees of M/s.J.M.Jain LLP, New Delhi. Except showing the mentioning made in the assessment order, no proof has been produced before this Court to establish that the petitioner was served personally those documents, which were seized

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from the premise of M/s.J.M.Jain LLP, New Delhi, which are relied upon against the petitioner, including the statement recorded against the petitioner from the employees of M/s.J.M.Jain LLP, New Delhi.

7. Under these circumstances, this Court is of the view that when the petitioner plead that the respondents have not at all provided those documents, which were seized from the premise of M/s.J.M.Jain LLP, New Delhi, in the interest of natural justice, it would be appropriate to direct the respondents to furnish the copies of seized documents from the premise of M/s.J.M.Jain LLP, New Delhi, as also the statement recorded from the employees of M/s.J.M.Jain LLP, New Delhi, so as to defend the case of the petitioner.

8. In light of the above, this Court is inclined to set-aside the impugned assessment order passed by the first respondent. While setting aside the impugned assessment order, this Court passes the following directions:

> (i) The order impugned herein is set aside and the matter is remanded to the first respondent for fresh consideration.
>
> (ii) The first respondent is directed to provide all the documents relied upon against the petitioner, which were seized at the premise of M/s.J.M.Jain LLP, New

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Delhi, and the statement recorded against the petitioner from the employees of M/s.J.M.Jain LLP, New Delhi, within a period of twelve (12) weeks from the date of receipt of a copy of this order.

(iii) Upon receipt of such documents by the respondents, the petitioner is directed to file the reply within a period of four weeks thereafter.

(iv) On filing of such reply/objection by the petitioner, the first respondent shall consider the same and issue a 14 days clear notice by fixing the date for personal hearing to the petitioner and thereafter, pass appropriate orders on merits and in accordance with law, after hearing the petitioner, as expeditiously as possible.

9. With the above directions, this Writ Petition is disposed of. No costs. Consequently, connected Miscellaneous Petitions are closed.

28.10.2024

Speaking/Non-speaking order
Index : Yes / No
Neutral Citation : Yes / No
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Krishnan Ramasamy,J.,

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To

1. National Faceless Assessment Center,
   Income Tax Department,
   Ministry of Finance,
   Government of India,
   New Delhi-2.
2. Assistant Commissioner of Income Tax,
   Non-Corporate Ward 4,
   BSNL Building,
   Greams Road,
   Chennai 600 006.

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