IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.11.2024

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THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P. No.17280 of 2024
and
W.M.P. Nos.19069, 19071 and 36069 of 2024

Aalam Gold and Diamonds Pvt. Ltd.,
Rep. By its Director S.Saravanakumar,
S-3 Amara Sri, Old No.313, New No.455,
Block No.75, 7th Floor,
Anna Salai, Teynampet,
Chennai-600 018. ... Petitioner

Vs.

Deputy Commissioner/ Assistant Commissioner,
of Income Tax, Central Circle 1(3),
3rd Floor, Investigation Building,
No.46 (Old No.108).
M.G.Road, Chennai-600 034. ... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus calling for the impugned order dated 30.03.2024 bearing DIN and Order No.ITBA/AST/S/147/2023-24/1063713919(1) for AY 2019-20 for PAN:AAQCA8987M, issued under Section 147 read with Section 143(3) of the Income Tax Act, 1961, by the

Respondent and consequently direct the Respondent to initiate fresh assessment proceeding and provide opportunity and then pass appropriate order.

For Petitioner : Mr.P.H.Arvind Pandian
Senior Advocate
for Mr.Velmurugan

For Respondent : Mr.A.N.R.Jayaprathap
Junior Standing Counsel

ORDER

The writ petition is filed challenging the impugned order dated 30.03.2022 whereby the petitioner's claim loan transactions was rejected and treated as undisclosed income in terms of Section 68 of the Income Tax Act, 1961 (hereinafter referred to as "the Act"), on the basis of statements obtained from employees/ 3rd parties.

2. It is submitted by the learned Senior Advocate appearing for the petitioner that despite a specific request having been made by the petitioner to furnish the complete sworn statement purported to have been recorded under Section 132 (4) of the Act and also an opportunity to cross-examine the persons whose statements were sought to be relied upon, the same was not granted on the premise that the above request cannot be entertained due to paucity of time. The relevant portions of the impugned order is extracted hereunder:

"9. Hence, based on the material evidences found and seized and the sworn statements recorded during the search, assessee was showcaused on 23.03.2024 why Rs.23,50,00,000/- should not be added to the returned income as unexplained cash credits. In response to the show cause assessee replied on 26.03.2024 relevant parts is reproduced below:

The complete sworn statements under Section 132(4) purported to be recorded from Shri.Somayajulu Srinivas Rao Accountant of M/s.Somasila Solar Power Ltd. as cited in the SCN was not furnished to us. Also, the sworn statements of other persons relied upon was not furnished to us.

No opportunity to cross examine the persons whose statements are relied upon in the SCN is given to us in the interest of natural justice. Hence the sworn statements cited in SCN cannot be relied in the assessment."

3. It is submitted by the learned Senior Advocate that the impugned order thus suffers from violation of principles of natural justice.

4. To the contrary, it was submitted by the learned Junior Standing Counsel for the Respondent that the order under challenge is appealable and therefore the writ petition need not be entertained. To a pointed question whether the statements of parties relied upon were not furnished nor request for cross-examination considered as submitted by the learned counsel for the petitioner, the learned Junior Standing Counsel for the Respondent was not able to controvert the same.

5. Heard both sides and perused the materials on record.

6. This Court is conscious of the fact that writ petition under Article 226 of the Constitution of India would not be entertained normally if statutory remedy is available. However, existence of alternate remedy is not an embargo or an absolute bar to exercise power under Article 226 of the Constitution of India but a self-imposed restriction and the following circumstances viz., violation of principles of natural justice or lack of jurisdiction or error apparent on the face of the record are some of the exceptions carved out to the rule of alternate remedy for exercise of discretion under Article 226 of the Constitution of India.

7. It is by now well-settled that taxing authorities entrusted with the powers to make assessment for taxes discharge quasi-judicial functions and they are bound to observe the principles of natural justice in reaching their conclusions. It is true that the assessing authority is not fettered by technical rules of evidence and pleadings and is entitled to act on material which may not be accepted as evidence in a court of law but that does not absolve it from the obligation to comply with the principles of natural justice. It is normally necessary that a copy of the incriminating statement of the witness must be given

to the assessee in order to enable him to have an effective and useful cross-examination[1]. It is trite law that cross-examination is the *sine qua non* of due process of taking evidence and no adverse inference can be drawn against a party unless the party is put on notice of the case made out against him. He must be supplied the contents of all such evidence, both oral and documentary, so that he can prepare to meet the case against him. This necessarily also postulates that he should cross-examine the witness hostile to him[2]. It is also trite law where the assessee has clearly stated in his objections that he wanted an opportunity to cross-examine the witnesses who provided information to the Department, denying such opportunity to the assessee results in violation of the principles of natural justice[3].

8. Taking into account the above legal position, this Court is of the considered view that the impugned order suffers from the vice of violation of principles of natural justice. In view thereof, the impugned order is set aside and the Respondent is directed to furnish the sworn statements of the parties which were relied upon and also consider the request for an opportunity to cross-examine and pass orders in accordance with law after affording a reasonable opportunity of hearing to the petitioner.

1 *State of Punjab vs. Bhagat Ram reported in AIR 1974 SC 2335.*
2 *CIT vs. Eastern Commercial Enterprises reported in (1994) 210 ITR 103.*
3 *L.Abdulla Kunhi vs. State of Kerala reported in (2001) 122 STC 461.*

9. It is submitted by the learned Senior Advocate for the petitioner that there is a bank attachment. In view of the fact that the impugned order is set aside, the bank attachment shall stand raised forthwith.

10. With the above directions, the writ petition stands disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

06.11.2024

Speaking (or) Non Speaking Order
Index : Yes/ No
Neutral Citation: Yes/No
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To:
Deputy Commissioner/ Assistant Commissioner,
of Income Tax, Central Circle 1(3),
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MOHAMMED SHAFFIQ, J.

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