IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.08.2024

CORAM:

THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

WP.No.20312 of 2024
WMP.Nos.22248 and 22249 of 2024

M/s.Mohamed Naveen Faizal ... Petitioner

Vs

1. The Principal Commissioner of Income Tax
   Madurai 1, BB Kularm, Madurai 625002

2. The National e-Assessment Center, Income Tax Department
   Ministry of Finance, Government of India
   New Delhi

3. The Income Tax Officer, Ward 1
   Nagapattinam. ... Respondents

Prayer:- This Writ Petition is filed, under Article 226 of the Constitution of India, for issuance of Writ of Certiorari to call for the records relating to the order dated 22.03.2022 in Ref.No.PAN:BSYPM5932N (DIN;ITBA/AST/S/147/2021-22/1041223788 (1) of the 2nd Respondent and the consequential order dated 27.03.2024 in Ref.No. DIN and ITBA/REV/F/REV7/2023-24/1063440518(1) OF THE 1st Respondent and to quash the same.

For Petitioner : Mr.A.Chandrasekaran

For Respondents : Dr.B.Ramaswamy, Sr. Standing Counsel

ORDER

1. This Writ Petition is filed for issuance of Writ of Certiorari to call for the records relating to the order dated 22.03.2022 in Ref.No.PAN:BSYPM5932N

(DIN;ITBA/AST/S/147/2021-22/1041223788 (1) of the 2nd Respondent and the consequential order dated 27.03.2024 in Ref.No. DIN and ITBA/REV/F/REV7/2023-24/1063440518(1) of the 1st Respondent and to quash the same.

2. The case of the Petitioner is that the Petitioner is a Agent, who was working for various travel agencies for booking air tickets through them and getting commissions for the services from them, after deducting TDS by the travel agencies. As per the prevailing practice, the ticket charges are deposited in the Petitioner's bank account and after booking tickets, the amounts will be transferred to the account of the travel agencies and thereafter, he will get commission from them and thus, his income is not coming under the taxable limit. While so, the 2nd Respondent issued a show cause notice dated 27.02.2022, proposing to treat the entire deposits made in the Petitioner's bank account as income of the Petitioner and a reply dated 05.03.2022 was sent to the 2nd Respondent, seeking further time for filing additional documents. Thereafter, the impugned order dated 22.03.2022 came to be passed without giving a personal hearing and considering the contentions of the Petitioner and it was published in the Online Portal. The Petitioner came to know about the same only when the 3rd Respondent demanded the dues over phone. Thereafter, the Petitioner filed a revision before the 1st Respondent, who also without hearing the Petitioner and without considering

the facts of the case, confirmed the order of the 2nd Respondent by the impugned order dated 27.03.2024, on the grounds that no documents were filed, though the Petitioner is in possession of all necessary documents. Hence, this Writ Petition has been seeking relief as stated above.

3. This Court heard the learned counsel on either side, considered their submissions and also perused the materials placed on record.

4. The learned counsel for the Petitioner would submit that since as per the prevailing practice, the amounts towards ticket charges are deposited by the customers in the bank account of the Petitioner and thereafter, after booking tickets, the amounts are transferred to the account of the travel agencies, who after deducting TDS will make commission payment and hence, the amount deposited by the customers in his account cannot be treated as the income earned by the Petitioner and stating so, the Petitioner sent a reply to the impugned show cause notice and in fact, the Petitioner sought for time for filing of additional documents to explain his case, however, the impugned order was passed by the 2nd Respondent without providing an opportunity of personal hearing and considering the reply to the show cause notice and it was published in the Online Portal and hence, the Petitioner had no occasion to know about the same, however, after coming to know about the same through the 3rd Respondent over phone, the Petitioner filed a revision before the 1st Respondent and the revision was also rejected without considering

the said aspects and hence, both the impugned orders are in violation of principles of natural justice. The learned counsel would further submit that the Petitioner would be able to establish his case if an opportunity is provided.

5. The learned Government Advocate for the Respondents would submit that it is not that a reasonable opportunity was not given to the Petitioner, but actually, to the show cause notice, the Petitioner sent a reply dated 05.03.2022 and hence, the Petitioner cannot complain of breach of principles of natural justice and that the Petitioner has not at all filed any return in respect of the ticket amounts received from various customers and hence, the impugned orders came be passed and pray for dismissal of this Writ Petition.

6. On considering the materials available on record and the submissions of the learned counsel on either side, it is seen that the Petitioner is not a travel agency, but he was working as an Agent for travel agencies on commission basis for booking air tickets for various customers. For the purpose of booking tickets, he is used to receive the ticket charges from the customers in his bank account and then, after booking tickets, transfer the amount to the account of the travel agencies and thereafter, he will get commission from the travel agencies. This type of transaction of the Petitioner appears to be a business. These facts have been explained by the Petitioner in his reply dated 05.03.2022 and he has sought for time for producing bank statement from various banks and file a reconciliation statement. However, the concerned

Authorities did not provide any such opportunity to the Petitioner. However, one thing is clear that all the documents have not been produced by the Petitioner to infer whether the Petitioner sought for time for filing the additional documents in his reply. However, the impugned orders were passed without providing a opportunity of personal hearing and without taking into consideration the details in respect of the business of the Petitioner.

7. It is no doubt true that every individual has to pay income tax in proportionate to his annual income, but it can be assessed only based on relevant documents. In this case, when some documents are available with the Petitioner and he has also sought for time for filing the same, which was not considered, though personal hearing was not sought for, it is the bounden duty of the Respondent authority to provide an opportunity of filing additional documents, including a personal hearing to the Petitioner, when a decision is going to be taken against him. According to the Petitioner, if an opportunity is provided, he will be able to establish his case. In such circumstances, it is just and necessary to provide an opportunity to the Petitioner to establish his case, on merits and in accordance with law.

8. For the reasons stated above, the matter is remanded back to the 1st Respondent for consideration afresh, by setting aside the impugned orders on condition that the Petitioner shall pay a cost of Rs.5,000/- to the Tamil Nadu Legal Services Authority, within a period of one week from the date of

receipt of a copy of this order and on such payment of cost, the Petitioner is permitted to file a fresh reply along with necessary documents within a period of three weeks thereafter and on such reply being filed within the said period, the 1st Respondent is directed to consider the matter afresh and pass orders, after providing an opportunity of personal hearing to the Petitioner, on merits and in accordance with law, within a period of eight

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weeks from the date of receipt of the Petitioner's reply.

9. With the above directions and terms, this Writ Petition is disposed of. No costs. Consequently, the connected MPs are closed.

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Index:Yes/No
Web:Yes/No
Speaking/Non Speaking
Neutral Citation: Yes/No
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To

1. The Principal Commissioner of Income Tax, Madurai 1, BB Kularm, Madurai 625002
2. The National e-Assessment Center, Income Tax Department, Ministry of Finance, Government of India, New Delhi
3. The Income Tax Officer, Ward 1, Nagapattinam.

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