IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 12.04.2024

CORAM

THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P. No.24362 of 2021
W.M.P. Nos.25669 and 25671 of 2021

Sutherland Global Services Private Limited,
Second Floor, Building B-2 No.16,
GST Road, Gateway Office Parks,
Perungalathur, Chennai-600 063
Represented by its Partner
Mr.Lakshminarayanan Ramasamy, Age 36 ... Petitioner

Vs.

1.Deputy Commissioner of Income Tax,
Central Circle 3(3), 3rd Floor, Investigation Building,
No.46, (Old No.108), Mahatma Gandhi Road,
Chennai, Tamil Nadu-600 034.

2.Joint Commissioner of Income Tax,
Central Range-3,
3rd Floor, Investigation Building,
No.46 (Old No.108), Mahatma Gandhi Road,
Chennai, Tamil Nadu- 600 034. ... Respondents

PRAYER : Writ Petition is filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari calling for the records in DIN/ITBA/AST/S/143(3)/2021-22/1036062065(1) dated 30.09.2021 for the assessment year 2018-19 on the file of the Respondent No.1 and quash the same.

For Petitioner : Mr.R.V.Easwar

Senior Counsel
for Mr.R.Sandeep Bagmar

For Respondents : Mr.A.P.Srinivas
Senior Standing Counsel

ORDER

The present writ petition has been filed challenging the impugned order of assessment under Section 143(3) of the Income Tax Act, 1961 (hereinafter referred to as "the Act") dated 30.09.2021 on the premise that the order is made in violation of principles of natural justice inasmuch as no reasonable opportunity was granted to the petitioner, further the order is made invoking Section 37 and 40 of the Act, instead of referring to the Transfer Pricing Officer (TPO) thus, contrary to Instruction No.3 dated 10.03.2016.

2.Case of the petitioner:

i) The impugned order of assessment has been made on 30.09.2021 after issuing the petitioner a notice on 27.09.2021 calling upon the petitioner to submit its objections on or before 30.09.2021 at 11.30 a.m. Documents were submitted by the petitioner on 30.09.2021 around 04.06 p.m. However, the same has not been considered apparently in view of the fact that the time granted on 30.09.2021 was only till 11.30 a.m. The impugned order of assessment suffers from violation of principles of natural justice inasmuch as the 3 days time limit which was granted to respond to the notice dated 27.09.2021 was inadequate thus the opportunity granted was not real but illusory. In any event a duty is cast on the authority to pass orders taking into account the objections / documents that were submitted on 30.09.2021 at 4.06 p.m. In this regard, it was submitted that under similar circumstances, this Court had held that even though the assessing officer may specify a particular time during the course of the day for submission of objection/document, it is open to the assessee to furnish documents throughout the working hours of that day and any documents / objections that are filed ought to be considered and orders made after taking into account the documents/ replies submitted.

ii) During the relevant assessment year 2018-19, there were three international transactions under the heads “Business Development Commission” for Rs.114,89,84,000/-, “Management Fees” for Rs.22,87,33,894/-, and “Outsourcing Expenses (Intercompany Support Services)” for Rs.21,63,80,918/-.

iii) It has been observed in the assessment order that the transactions between the petitioner and Sutherland Enterprises is a colourable device to shift profits outside the country. It is submitted that the above observations by itself would necessitate reference to the Transfer Pricing Officer. However, the assessing officer had erred in making the assessment by invoking Section 37 and 40 of the Act, overlooking the fact that in respect of international transactions with associated enterprises where the transactions are in excess of Rs.5 crores would require reference to the Transfer Pricing Officer in terms of Instruction No.3, while referring to the judgment of the Hon'ble Supreme Court in the case of *Principal Commissioner of Income Tax vs. S.G.Asia Holdings (India) Private Limited* reported in *(2019) 108 taxmann.com 213 SC*, wherein the above Instruction No.3 has been referral to with approval. The order insofar as it fails to refer the matter to the Transfer Pricing Officer is contrary to Instruction No.3 and unsustainable.

3. Case of the respondents:

Sufficient opportunities were granted to the petitioner and the documents which are stated to have been submitted had reached the respondents only at 5.22 p.m., on 30.09.2021, by which time the impugned orders was passed and therefore the impugned order of assessment does not warrant any interference.

3. In response, it was clarified by the learned Senior Counsel appearing for the petitioner that the reply/ documents were submitted at 4.00 p.m. and was intimated to the officer at 5.22 p.m., even in terms of para 7 of the counter affidavit and thus clarified.

4. I find merit in the submission of the learned Senior Counsel for the petitioner that the opportunity granted was not real but illusory and therefore the order of assessment is liable to be set aside on the ground of violation of principles of natural justice. It may be relevant to note that fixation of time-limit during the working hours of a notified date has been deprecated by this Court. In this regard, it may be relevant to refer the judgment of this Court in *Velu Palandar* case wherein after recording that the petitioner was granted time till 11.30 a.m. to file its objections and the same not having filed by 11.30 a.m., the assessing officer proceeded to pass orders of assessment on the same date, it was held as under:

> *"**3.** .... But, it happened that the respondent made an assessment order even on 25th March, 1967, because, according to the respondent, time was granted till 11-30 a.m. on 25th March, 1967, and no objections having been filed by that time, the assessment was completed. The petitioner has come up to this court questioning the validity of the order of assessment dated 25th March, 1967, primarily on the ground that he had*

no fair opportunity to explain his case and collaterally also on other grounds which revolve on facts.

......

***5.** I am not inclined to go into the merits, as I am fairly satisfied that the petitioner did not have an effective opportunity to state his objections and sustain his case that the goods in question cannot once over be subjected to tax, as, in law, they are liable to sales tax at one single point. The main contention of the learned counsel for the petitioner is that the fixation of time-limit during the working hours of a notified date is by itself a method which militates against the principles of natural justice and fair hearing. <u>If any quasi-judicial Tribunal gives a party before it an opportunity to explain himself or herself to a particular action proposed by the said authority, then, it would be futile to fix a particular hour of a day as the outer limit for making such submissions. It would be normally difficult even for such an authority who fixes such an outer limit, to obey it itself for all purposes. There may be instances where the authority may not be in a position to take up the case on that date due to official pressure or otherwise. If an opportunity is given to a party to explain itself or submit its objections, such an opportunity must be realistic and not notional. If any time, such as the one given in this case, is given, the normal presumption is that the person who is to state his objections can file the same before the expiry of the working hours of that date.</u> Such outer limit may be fixed for administrative convenience; but, if it comes to the question of appreciation of rights and obligations of parties, equity and justice interfere and compel courts to afford a reasonable and effective opportunity to persons aggrieved and affected to state their objections by the end of the working day in question notwithstanding the fact that an hour, a minute or a second of the day is noted in that order."*

(emphasis supplied)

5. I am conscious that the above order is delivered under the TNGST Act, 1959. However, even while dealing with the assessments under the Income Tax Act, 1961 in the present digital era, the above principles have been reiterated on more than one occasion by this Court. In this regard, it may be relevant to refer to the order of this Court in W.P.No.145 of 2020

dated 07.01.2020, wherein it was held as under:

> *"2. The petitioner has impugned the order dated 18.11.2019 which was passed pursuant to the notice under Section 142 (1) of the Income Tax Act on 17.12.2019. The notice was digitally signed by the Assessing Officer at 4.59 p.m on 17.12.2019 calling upon the petitioner to furnish the details by 11.30 a.m. on the following date on 18.12.2019. The petitioner responded to the same, the following date at about 16.24 hours i.e, at 4.24 p.m. on 18.12.2019. However, the impugned order came to be passed by the assessing officer and was digitally signed by him at 4.28 p.m on the following date without hearing the petitioner. It is evident that the impugned order was passed as against the Principle of Natural Justice. I also find sufficient grounds to interfere.*
>
> *3. The impugned order is therefore setaside and the case is remitted back to the respondent to pass speaking order after considering the representation of the petitioner filed on 18.12.2019 along with the reply to the petitioner before the assessing officer who was incharge of the case earlier."*

6. In view thereof, I am inclined to set aside the order dated 30.09.2021 and to remand the matter back to the assessing officer to decide the matter afresh. The assessing officer shall pass orders after affording reasonable opportunity to the petitioner in accordance with law. It is open to the petitioner to put forth its objections / submissions on all aspects within a period of 4 weeks from the date of receipt of copy of this order.

7. In the result, the impugned order is set-aside, the writ petition stands disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

12.04.2024

Speaking (or) Non Speaking Order
Index : Yes/ No
Neutral Citation: Yes/No
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<u>MOHAMMED SHAFFIQ, J.</u>

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