IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.01.2024

CORAM

THE HONOURABLE MR.JUSTICE R.MAHADEVAN
AND
THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.A. No.2845 of 2023
and
C.M.P. No.23686 of 2023

M/s.Smart Furniture
Rep. By its Partner, Mr.S.Ahilan Anand,
No.2/194, Mudichur Road, Mannivakkam,
Kanchipuram-600 048. ... Appellant

v.

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

Prayer : Writ Appeal is filed under Clause 15 of the Letter Patent, praying to set aside the order in W.P.No.29242 of 2022 dated 21.08.2023.

For Appellant : Mr.T.V.Muthu Abirami

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

JUDGMENT

The present writ appeal was filed challenging the order of the learned Judge thereby rejecting the contention of the appellant herein that the impugned order of assessment was made in violation of the principles of natural justice, on the premise that the impugned order of assessment does not suffer from infirmities warranting interference under Article 226 of the Constitution of India.

2. Brief facts:

i) The appellant is a partnership firm engaged in the business of trading of furniture and home appliances.

ii) The appellant had filed the returns regularly by paying appropriate taxes. For the assessment year 2020-21, they filed its return of income on 19.01.2021 declaring a total income of Rs.30,38,800/- while paying taxes to the extent of Rs.10,41,116/-.

iii) While so, there was a survey under Section 133 A of the Income Tax Act, 1961 (in short, "the Act") on 27.02.2020. Pursuant to the same, the appellant's case was purportedly transferred under Section 127 of the Act and assigned to the office of the 2nd Respondent. Thereafter, a notice under Section

143(2) of the Act, came to be issued on 30.06.2021, wherein reference was made to the survey under Section 133A of the Act, while calling upon the appellant to submit evidence, if any, in support of their return of income. The appellant responded to it *vide* its reply dated 26.07.2021. Thereafter, a notice dated 17.11.2021 under Section 142(1) of the Act, was issued calling upon the appellant to furnish the accounts and documents specified in the Annexure to the said notice. The relevant portions are extracted hereunder:

> *"Your case has been notified and centralized to this Circle vide Notification No.31/2020-21 in C.No.272A/Centralisation/ PCIT-1 / 2020-21 dated 02/11/2020.*
>
> *For the relevant year under consideration (A.Y. 2020-21), you are requested to produce the following:*
>
> 1. *Briefly explain sources of income of the firm and explain the nature of business activities undertaken by the firm, if any during the year.*
> 2. *Please furnish a copy of books of accounts of the firm in softcopy- the financial statements, audit report (if any).*
> 3. *Please furnish computation of income of the firm from all sources during the year.*
> 4. *Please furnish the address of office(s) shop, branch (if any) and the godown.*
> 5. *Please furnish copy of partnership deed of the firm, codicil deed (if any).*
> 6. *Please furnish complete family tree of the partners of the firm, with name, age, occupation and assessment details.*
> 7. *Please furnish details of house properties owned by your firm.*
> 8. *Please furnish the details of unsecured loans, with name and present communication address of the creditors, PAN, date and mode of receipt of the loan, interest payable and purpose of the loan.*
> 9. *Please furnish copies of statement of all bank accounts of the firm of the Financial Year 2019-20. Also, please give*

details of the Bank accounts including F.D. And credit cards in the following format:

Name and address of the bank with branch	Account No. and type of account	Interest received / accrued/ debited	Balance as on 31st March of the previous year

10. Please give the details of all investments of the firm in movable and immovable properties with date(s) of acquisition/ construction/ investment, consideration paid and mode of payment(s). Also please furnish the details of all the properties disposed of during the year.

11. Reconcile the income declared in the Income tax return filed by the firm and the tax credit claimed in the return of income for A.Y.2020-21 with Form 26AS."

iv) The appellant in response thereto, requested 15 days time *vide* letter dated 22.11.2021. On 23.11.2021, the appellant submitted its explanation along with supportive material on various dates viz., 23.11.2021, 30.11.2021, 08.12.2021, 20.01.2022 and 14.02.2022.

v) Thereafter, a show cause notice was issued on 16.03.2022, containing the following proposals:

a) To disallow the excess remuneration of Rs.15,60,000/- claimed by the assessee on the premise that the assessee had not deducted tax at source on the above payments representing interest expense.

b) To disallow a sum of Rs.3,38,385/- under Section 40(a)(ia) of the Act.

vi) The petitioner submitted its reply to the above proposal *vide* its letter dated 17.03.2022 along with evidence in support thereof.

vii) Yet another show cause notice dated 02.08.2022 was issued by the respondent, wherein while making reference to the survey proceedings, it was alleged that there was an excess stock to the extent of Rs.3,86,63,654/-. In response, the appellant recalculated the value of the excess stock found during survey by adopting the profit percentage to be 30% and reducing the same from the stock value taken at the time of survey to arrive at the purchase value. Though, the appellant had offered profit only at the rate of 14.19% at the time of survey, they were called upon to explain the above difference in the profit margin.

viii) The appellant submitted its reply *vide* letter dated 05.08.2022, in response thereto, along with documentary evidence.

xi) Thereafter, the Respondent issued another notice dated 16.08.2022 wherein the appellant was called upon to explain the difference in the value of stock to the extent of Rs.29,36,013/-. The appellant submitted its response.

x) The impugned order of assessment was passed on 29.09.2022 adding a sum of Rs.3,10,20,813/- as unexplained investment under Section 69B of the Act on the premise that the appellant had not furnished any documentary evidence explaining the source of purchase of excess stock to the tune of Rs.3,10,20,813/-.

xi) Aggrieved by the order of assessment, the appellant preferred WP. No.29242 of 2022 before the writ court. By the order impugned herein, the learned Judge disposed of the said writ petition, by granting liberty to the appellant to file a statutory appeal before the appellate authority. Challenging the same, the present writ appeal came to be filed.

3. It was submitted by the learned counsel for the appellant that they were led to believe that their explanation in respect of alleged stock variation which was originally fixed at Rs.3,86,63,654/- has been accepted, except for a sum of Rs.29,36,013/-, inasmuch as in the notice dated 16.08.2022 explanation was called for only in respect of Rs.29,36,013/-. The appellant had thus submitted its response *vide* letter dated 18.08.2022 only with regard to the alleged difference of Rs.29,36,013/-. To appreciate the above submission, it may be relevant to extract the notice dated 02.08.2022, wherein it was proposed to treat Rs.3,83,63,654/- representing excess value of stock and liable to be treated as unexplained investment, while adding the same to the total income invoking Section 69 of the Act and the notice dated 16.08.2022, wherein the stock value was reworked and the appellant was called upon to explain the difference of Rs.29,36,013/-. The relevant portion of the same is extracted hereunder:

Show Cause Notice dated 02.08.2022:

A show cause notice in the above case has been issued to the assessee on 16.03.2022. The assessee has furnished reply in response to the above. In continuation to the above notice, the assessee is requested to provide further details as under:

1. During the course of the survey proceedings, there is an excess stock found to the tune of Rs.3,86,63,654/-. However, during the assessment proceedings it is noted that the assessee has recalculated the value of the excess stock found by way of reducing 30% of the stock value taken at the time of survey proceedings (i.e., considering cost purchase).

On the other hand, the assessee had offered gross profit at the rate of 14.19% only of the unaccounted sales disclosed at the time of survey proceedings.

The assessee is requested to provide the explanation in respect of the above.

2. The assessee is requested to provide documentary evidence explaining the source of purchase in respect of the excess stock found during the course of survey proceedings.

3. The assessee is requested to explain the treatment of the excess stock found during the course of survey proceedings in the books of the accounts.

4. The assessee is required to file its submissions before the undersigned on or before 08.08.2022 by 02.00 PM failing which the excess stock to the tune of Rs.3.86 Cr shall be treated as unexplained investment and shall be added to the total income of the assessee for AY 2020-21 invoking the provisions of Section 69 of the Income Tax Act, 1961."

Show cause notice dated 16.08.2022:

1. Vide reply dated 05.08.2022, the assessee has enclosed sample copies of purchases, invoices and requested to rework the earlier stock found during the course of survey at cost price or net realizable value and arrived at entire stock value of Rs.2,74,76,439/- against the value arrived at the time of survey

Rs.3,86,63,654/-. However, the assessee has not produced evidence for arriving at the stock value of Rs.2,74,76,439/-, in entirely. Considering the above facts, the stock value is reworked on the basis of GP rate @ 14.19% offered by the assessee himself, which is tabulated as under:

	Descriptions	***Amount (in Rs.)***	***Amount (in Rs.)***
	Entire stock valued at MRP		3,86,63,654
Less	Margin at 14.19%	54,84,373	
	Net Stock Value arrived		3,31,79,231

2. *Further the assessee had submitted the details explaining the source of the above stock which is tabulated as under:*

	Descriptions	***Amount (in Rs.)***	***Amount (in Rs.)***
	Sundry Creditors payable		1,76,69,267
	Borrowed capital	1,50,74,001	
Less	Amount paid towards Rent	25,00,000	
	Balance Loan used for		1,25,74,001
	Total Funds used		3,02,43,268

The assessee is requested to furnish explanation in respect of the difference arrived at the tune of Rs.29,36,013/- (33179281-30243268) before the undersigned on or before 22.08.2022 by 4.00 PM failing which decision shall be made as per materials available on records."

(emphasis supplied)

4. It was further submitted by the learned counsel for the appellant that they were led to believe by the notice dated 16.08.2022 that except for a sum of Rs.29,36,013/-, the Respondent had accepted the explanation offered by the appellant and had confined their response only in respect of difference of Rs.29,36,013/- in the reply dated 18.08.2022. The appellant had thus been denied the opportunity to clarify/ explain as to the source of purchase of the excess stock of Rs.3,10,20,813/-. However, the learned Judge had erred in rejecting the writ petition on the premise that the dispute pertains to the unexplained stock found during survey and thus, the appellant ought to have filed a statutory appeal and it was not open to the Court to get into the accounting method touching on the merits. It was also submitted by the learned counsel for the appellant that the learned Judge had failed to see that the challenge to the impugned order of assessment was on the ground that the same was made in violation of the principles of natural justice and thus, falls within the exceptions carved out to the rule of alternate remedy.

5. To the contrary, it was submitted by the learned counsel for the Respondent that the order of the learned Judge does not warrant interference inasmuch as the appellant has an effective alternative remedy.

6. Heard both sides and perused the records.

7. We find merit in the submission of the learned counsel for the appellant that the proceedings leading up to the passing of the impugned order *lacks* clarity and has resulted in the appellant being led to believe that their response/ explanation in respect of the proposal to treat a sum of Rs.3,86,63,654/- as excess stock, except to the extent of Rs.29,36,013/- was accepted inasmuch as the Respondent had *vide* notice dated 16.08.2022 called for explanation only in respect of a sum of Rs.29,36,013/-. This in turn has resulted in the appellant not putting forth any further explanation in respect of the alleged excess stock over and above Rs.29,36,013/-, thereby resulting in violation of principles of natural justice.

8. Now, with regard to the rejection of the writ petition on the ground of availing of alternative remedy, it is trite law that Courts would be loathe to entertain a writ petition if alternate remedy is available. However, the rule of alternate remedy is a self-imposed restriction, to which the Courts have carved out exceptions some of them being violation of principles of natural justice, *lack* of jurisdiction and error apparent on the face of record inasmuch as we

have already find that the impugned order suffers from violation of principles of natural justice and the same warrants interference under Article 226 of the Constitution of India.

9. In the given circumstances, we are inclined to remand the matter back to the assessing authority, who shall grant one more opportunity to the appellant to put forth its explanation / objection in respect of excess stock, which has been treated as unexplained investment under Section 69B of the Act. Accordingly, the orders impugned in this appeal as well as in the writ petition, are set aside and the Respondent is directed to grant an opportunity of hearing to the appellant and to pass orders afresh, within a period of 12 weeks from the date of receipt of a copy of this judgment.

10. This Writ Appeal stands disposed of on the above terms. No costs. Consequently, connected miscellaneous petition is closed.

[R.M.D., J.] [M.S.Q., J.]
04.01.2024

Index: Yes/No
Speaking order / Non speaking order
Neutral Citation: Yes/No
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To

Deputy Commissioner of Income Tax,
Central Circle-3(3), Investigation Building,
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