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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On	13.08.2024
Pronounced On	02.01.2025

Coram:

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.No.879 of 2022
and W.M.P.Nos.958 & 960 of 2022

Thiru.Ramanathan Murugappan

...Petitioner

Versus

The Deputy Commissioner of Income Tax,
Central Circle 3(4),
Investigation Wing, Room No.06,
New No.46, Mahatma Gandhi Road,
Chennai – 600 034.

...Respondent

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of certiorari calling for the records in PAN: ABSPR4462J dated 30.12.2021 on the file of the respondent relating to A.Y.2017-18 and quash the same.

For Petitioner	:	Mr.G.Baskar
For Respondent	:	Mr.A.P.Srinivas, Senior Standing Counsel

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ORDER

With the consent of both sides, this writ petition is taken up for final disposal.

2. In the present writ petition, the petitioner has challenged the impugned Assessment Order dated 30.12.2021 passed by the respondent under Section 153C r/w. Section 143(3) of the Income Tax Act, 1961 (hereinafter referred to as 'IT Act').

3. The petitioner had filed the Returns of Income on 05.03.2018, admitting the Gross Income of Rs.57,47,468/- and Net Taxable/Total Income of Rs.55,67,270/-. Meanwhile, a search was conducted at the residence of one N.Viswanathan, Director of SLN Coffee Pvt. Ltd. on 26.04.2017 under Section 132(A) of the IT Act.

4. During the said search, several documents were seized, including the a Sale Agreement dated 28.09.2016 pertaining to the sale of a vacant house plot standing in the name of the said N.Viswanathan, Director of SLN

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Coffee Pvt. Ltd. The petitioner has resigned on 30.11.2016 from SLN Coffee Pvt. Ltd. i.e., almost two months after the said Sale Agreement dated 28.09.2016, prior to the search that was conducted at the premises of one N.Viswanathan, Director of SLN Coffee Pvt. Ltd. on 26.04.2017.

5. Pursuant to the search that was conducted at the residence of said N.Viswanathan, Director of SLN Coffee Pvt. Ltd., a Notice dated 12.07.2021 was issued to the petitioner for the Assessment Year 2017-18 under Section 153C of the IT Act. Similar notice was also issued for the Assessment Years 2014-15 to 2016-17.

6. Pursuant to the aforesaid Notice dated 12.07.2021, the petitioner had filed his Returns of Income on 22.09.2021, admitting a Taxable Income of Rs.56,08,750/-. Thereafter, a Notice dated 24.09.2021 under Section 143(2) r/w. Section 153C of the IT Act and a Notice for Change of Incumbent dated 09.11.2021 under Section 129 of the IT Act were issued to the petitioner.

7. In response to the Notice dated 24.09.2021, the petitioner sent his

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Reply on 10.11.2021. Subsequently, a Notice dated 30.11.2021 under Section 142(1) of the Act and a Show Cause Notice dated 16.12.2021 were issued to the petitioner. The petitioner sent his Reply to the said show cause notice vide Letter dated 20.12.2021 & 26.12.2021 and an e-mail dated 28.12.2021.

8. The petitioner claims to be a former employee of M/s.SLN Coffee Private Limited, Bollur Village, Gudde Hosur Post, Kushalnagar, Karnataka. He had signed a Sale Agreement dated 28.09.2016 for purchase of a vacant house site of the said N.Viswanathan, Director of SLN Coffee Pvt. Ltd. viz., Plot No.104C in Srinivasa Nagar at Farm Grove measuring 31.057 cents (13,540.852 sq.ft.) comprised in Survey No.51(IA) (part) situated at No.43, Padur Village, Chengalpattu Taluk, Kancheepuram District bearing the plot, being bounded on the East by Plot No.74E, West by 24 feet wide road, North by Plot No.104B and South by Plot No.104D within the Sub-Registration District of Thirupporur and Registration District of Chengalpattu and within the limits of Padur Panchayat and Thirupporur Panchayat Union.

9. In terms of the aforesaid Sale Agreement, the petitioner had agreed

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to pay a sum of Rs.1,77,50,000/-, out of which, a sum of Rs.50,00,000/- was to be paid in the form of cheque and the balance of Rs.1,27,50,000/- by way of cash.

10. It is the case of the petitioner that after receiving the aforesaid amount, the said N.Viswanathan, Director of SLN Coffee Pvt. Ltd. however failed to register the Sale Deed and therefore, the petitioner was also forced to resign from the company on 30.11.2016. Till date, neither the petitioner has paid the aforesaid balance amount in cash nor the said N.Viswanathan, Director of SLN Coffee Pvt. Ltd. has executed a Sale Deed in favour of the petitioner.

11. The dates of the notices issued by the respondent and the dates of the petitioner's reply are tabulated hereunder:

Sl.No.	Dates of the Notices	Dates of the Reply
1	24.09.2021	10.11.2021
2	30.11.2021	Nil
3	16.12.2021	20.12.2021, 26.12.2021 & 28.12.2021
4	28.12.2021	Nil

12. The learned counsel for the petitioner submitted that the petitioner had requested the respondent for cross examination of

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N.Viswanathan, Director of SLN Coffee Pvt. Ltd. However, it was declined by the respondent vide e-mail dated 29.12.2021. Ultimately, without giving sufficient time to the petitioner to meet out the allegation against him and also, without permitting him to cross examine the N.Viswanathan, Director of SLN Coffee Pvt. Ltd., the respondent has passed the impugned Assessment Order dated 30.12.2021, violating the principles of natural justice.

13. The learned counsel further submitted that the impugned Assessment Order dated 30.12.2021 has been passed in a tearing hurry on the ground that the limitation for completing the assessment was getting over on 31.12.2021, even though in terms of Section 153B of the IT Act, the time for completing the assessment would actually get barred only on 31.12.2022. The impugned Assessment Order from a notice issued by the Assessing Officer on 12.07.2021. It is also submitted that the petitioner was issued with several notices both under Sections 143(2) & 142(1) of the IT Act.

14. It is submitted that for the first time, the respondent vide Notice dated 30.11.2021 under Section 142(1) of the IT Act, informed the petitioner

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about the aforesaid Sale Agreement dated 28.09.2016, wherein, the petitioner was called upon to furnish an explanation regarding the sources of Rs.1,27,50,000/- with admissible documentary evidences.

15. It is further submitted that within thirty days or thereafter from 30.11.2021, the impugned Assessment Order dated 30.12.2021 has been passed, though the petitioner had requested for cross-examination of said N.Viswanathan, Director of SLN Coffee Pvt. Ltd. by e-mail dated 28.12.2021.

16. The learned counsel for petitioner further submitted that till date the property has not been registered and the property stands in the name of the said N.Viswanathan, Director of SLN Coffee Pvt. Ltd. and his brother.

17. The learned counsel for the petitioner also submitted that even otherwise if the assessment was getting time barred on 31.12.2021 and was informed to the petitioner by e-mail dated 28.12.2021, the proceedings ought not have been conducted in a tearing hurry in gross violation of the principles of natural justice without holding the petitioner to cross-examine

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the said N.Viswanathan, whose statement was recorded on 27.04.2017.

18. The learned counsel for the petitioner submitted that the denial of cross-examination is contrary to the law settled by the Hon'ble Supreme Court in ***Sona Builders Vs. Union of India*** reported in ***(2001) 251 ITR 197 (SC)*** and in ***Andaman Timber Industries Vs. Commissioner of Central Excise*** reported in ***(2015) 281 CTR 0241 (SC)***.

19. That apart, the learned counsel for the petitioner also drew the attention of this Court to the following decisions of the Hon'ble Supreme Court and that of the various High Courts:-

(i) Parashuram Pottery Works Company Limited Vs. Income Tax Officer reported in ***(1977) 106 ITR 1 (SC).***

(ii) B.Kubendran Vs. Deputy Commissioner of Income Tax, Central Circle 2(1), Chennai reported in ***(2021) 126 Taxmann.com 107 (Madras).***

(iii) Commissioner of Income Tax Vs. Pradeep Kumar Gupta reported in ***(2008) 303 ITR 95 (Delhi).***

(iv) Principal Commissioner of Income Tax Vs. Kanubhai Maganlal Patel reported in ***(2017) 79 Taxmann.com 257 (Gujarat).***

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20. The learned counsel for the petitioner submitted that the impugned Assessment Order is manually signed, though all the previous communications have been signed electronically.

21. It is submitted that the impugned Assessment Order would have been passed after 31.12.2021 as is evident from the fact that it was sent by registered post on 04.01.2022 and received by the petitioner only on 05.01.2022.

22. The learned counsel for the petitioner submitted that even otherwise in view of the outcome of Covid-19 pandemic and in view of the Taxation & Other Laws (Relaxation and Amendment of Certain Provisions) Ordinance, 2020 and the Taxation & Other Laws (Relaxation and Amendment of Certain Provisions Act) (TOLA) Act, 2021, the limitation for passing the order would have stood extended up to September 2022.

23. The learned counsel for the petitioner further submitted that notwithstanding the extensions under TOLA, under Section 153B of the IT

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Act the limitation would have expired on 30.12.2022.

24. Defending the impugned Assessment Order, the learned Senior Standing Counsel appearing for the respondent submitted that this writ petition is devoid of merits and therefore, the same is liable to be dismissed. He further submitted that the petitioner has not made payment of **Rs.50,00,000/-** through cheque to the said N.Viswanathan, Director of SLN Coffee Pvt. Ltd. It is further submitted that the petitioner has also not denied that he was in possession of the cash of **Rs.1,77,50,000/-**.

25. It is submitted that all that the petitioner has stated in the replies to various notices issued to him was that the aforesaid amount of **Rs.1,77,50,000/-** was never paid and therefore, the assessment has been completed based on the available records. It is further submitted that the petitioner is not entitled to cross-examine the signatory to the aforesaid Sale Agreement and there are no records to show that the petitioner has initiated any proceedings to recover the amount paid by the said N.Viswanathan, Director of SLN Coffee Pvt. Ltd. and therefore, on this count also, this writ petition is liable to be dismissed.

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26. The learned Senior Standing Counsel for the respondent also submitted the fact that the execution of the aforesaid Sale Agreement is not denied though the payment alone is denied. Therefore, the question of entertaining cross-examination of N.Viswanathan, Director of SLN Coffee Pvt. Ltd. does not arise.

27. I have considered the arguments advanced by the learned counsel for the petitioner as well as the learned Senior Standing counsel appearing for the respondent and I have perused the documents filed in support of the present writ petition and the counter affidavit filed by the respondent.

28. The challenge to the impugned proceedings on the ground that the impugned Assessment Order has been passed long beyond the period of limitation as under Proviso to Section 153B of the IT Act cannot be countenanced. The period of limitation for making assessment or re-assessment is two years from the end of the Financial Year of the search or nine months from the end of the Financial Year, in which, the Books of Account or Documents or Assets were seized or requisitioned and were

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handed over under Section 153C to the Assessing Officer having jurisdiction over such other person, whichever is later. Thus, the period for passing the Assessment Order under Section 153C would have expired on 31.03.2023.

29. However, with effect from 24.03.2020, the Country was under lock-down which resulted in large scale disruption of Governmental / social / political and economic activities. The Honourable Supreme Court came to the rescue of litigants and various departments and passed its first order on 24.03.2020 to extend the period of limitation.

30. Ultimately, the Central Government passed Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020 which was subsequently replaced by Taxation and Other Laws (Relaxation and Amendment of Certain Provisions Act) (TOLA) 2021 and statutorily extended the period of limitation. Several notifications have been issued extending the limitation.

31. Thus, it cannot be said that the impugned Assessment Order was passed beyond the period of limitation. Therefore, the objection of the

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petitioner to the impugned Assessment Order is time-barred and without jurisdiction is over ruled.

32. At the same time, it is evident that the petitioner has co-operated with the respondent by filing reply to the various notices mentioned above and had also requested for cross examination of said N.Viswanathan, Director of SLN Coffee Pvt. Ltd. However, the petitioner's request has been rejected by e-mail dated 29.12.2021, followed by the impugned Assessment Order dated 30.12.2021.

33. It is also evident that the impugned Assessment Order has been passed in hurry to ensure that the assessment does not get time barred in view of the limitation under proviso to Section 153B of the IT Act. There is a palpable violation of the principles of natural justice as the petitioner's right to cross examine the said N.Viswanathan, the Director of SLN Coffee Pvt. Ltd. has been denied.

34. Although the Department is really not governed by the strict rules of proviso to Section 3 of the Indian Evidence Act, 1872 as it stood during

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the period in dispute and is governed only by principle of preponderance of probability, I see no harm in allowing the petitioner to cross examine the said N.Viswanathan, Director of SLN Coffee Pvt. Ltd to establish his defence. Therefore, to balance the interest of the petitioner and the respondent, the impugned order is set aside and the case is remitted back to the respondent for passing a fresh order on merits, after permitting the petitioner to cross examine the said N.Viswanathan, Director of SLN Coffee Pvt. Ltd.

35. It is however made clear that the respondent will be governed by the principle of preponderance of probability and not by strict rules of evidences. The respondent shall endeavour to summon and produce the said N.Viswanathan, Director of SLN Coffee Pvt. Ltd., for cross examination by the petitioner. In case, the said N.Viswanathan, Director of SLN Coffee Pvt. Ltd. fails to answer to the summons, appropriate steps may be taken to secure his presence in person for Cross Examination by the petitioner. It is expected that the entire exercise will be completed within a period of six months from the date of receipt of a copy of this order.

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36. With the above directions, this writ petition is disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

02.01.2025

arb/mrr

Index : Yes / No

Neutral Citation : Yes / No

Speaking Order (or) Non-Speaking Order

To

The Deputy Commissioner of Income Tax,
Central Circle 3(4),
Investigation Wing, Room No.06,
New No.46, Mahatma Gandhi Road,
Chennai – 600 034.

C.SARAVANAN, J.

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**Pre-Delivery Order in
W.P.No.879 of 2022**

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