

W.A.(MD)No.1024 of 2025

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

DATED : 25.06.2025

CORAM

**THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN
and
THE HONOURABLE MR.JUSTICE K.RAJASEKAR**

**W.A.(MD)No.1024 of 2025
and
C.M.P.(MD)Nos.6468 and 6469 of 2025**

Thangamayil Jewellery Ltd.,
Rep., by its Managing Director,
No.124, Nethaji Road,
Madurai - 625 001.

... Appellant

Vs.

The Assessing Officer,
National E Assessment Circle,
Income Tax Department,
New Delhi.

... Respondent

Prayer : Writ Appeal filed under Clause XV of Letters Patent, to allow the writ appeal by setting aside the order passed in W.P.(MD) No.9972 of 2024 dated 10.03.2025 on the file of this Court.

For Appellant : Mr.Karthik, Senior Counsel,
For M/s.KV Law Firm.

For Respondent : Mr.N.Dilipkumar,Senior Standing Counsel.



WEB COPY



W.A.(MD)No.1024 of 2025

JUDGMENT
(By G.R.SWAMINATHAN, J.)

Heard the learned Senior Counsel for the appellant and the learned Standing Counsel for the Income Tax Department.

2.This writ appeal is directed against the order dated 10.03.2025 dismissing WP(MD)No.9972 of 2024 filed by the appellant herein.

3.The appellant company herein is an income tax assessee. They question the assessment order dated 29.03.2024 passed by the respondent herein. The assessment order pertains to the assessment year 2022 – 2023. The assessee had filed their return in time. It was taken up for scrutiny assessment. It was then referred for faceless assessment and intimation was sent to the assessee on 02.06.2023. Notice under Section 143(2) of the Income Tax Act was issued on the same day. Reply was received. There was a flurry of exchanges from both sides.

4.On 23.03.2024, show cause notice as to why the proposed variation should not be made was served on the assessee. It was followed by yet another notice on the same lines on 24.03.2024. The

2/11



W.A.(MD)No.1024 of 2025

assessee was given hardly three days time to respond. The assessee offered their explanation. Subsequently, they also sought personal hearing. Personal hearing was granted on 27.03.2024. The impugned assessment order came to be passed on 29.03.2024. Challenging the same, writ petition was filed. The learned Single Judge dismissed the same on 10.03.2025.

5.The learned Senior Counsel for the appellant submitted that the department did not adopt the process of assessment laid down in their own Standard Operating Procedure *dated* 03.08.2022. Clause N.1 of the said SOP reads as follows:-

“N.Process of Assessment

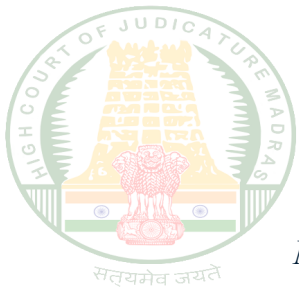
N.1 Show cause Notice (SCN) shall be issued in the prescribed format (Annexure AU-7), in all cases where any variation prejudicial to the assessee is proposed -

N.1.1 SCN shall be drafted after conduct of all necessary enquiry/verification and collection of relevant information.

N.1.2 SCN should contain:

N.1.2.1 Complete description of the issues involved;

N.1.2.2 Details of dates of all notices/opportunities given;



W.A.(MD)No.1024 of 2025

WEB COPY

N.1.23 Details of dates of compliance/non-compliance of the assessee;

N.1.24 Summary of all submissions of the assessee, to demonstrably reflect application of mind and consideration of all submissions;

N.1.2.5 Specific Information/material proposed to be used against the assessee;

N. 1.2.6 Variations proposed on the basis of reasonable inferences drawn.

N.1.3 To ensure adherence to the principles of natural justice and reasonable opportunity to the assessee, timelines to be given for obtaining response to the SCN shall be:

N.1.3.1 Response time of 7 days from the issue of SCN.

N.1.3.2 Response time of 7 days may be curtailed, keeping in view the limitation date for completing the assessment.”

The learned Senior Counsel stressed that even though the response time of seven days from the date of issuance of show cause has been stipulated, the assessee was given hardly three days. The learned Senior Counsel relied on the decision of this Court reported in **(2022) 449 ITR 351 (Madras) (P.T.Lee Chengalvaraya Naicker Trust Vs. Income-tax Officer)**.



W.A.(MD)No.1024 of 2025

WEB COPY

6.The learned standing counsel drew our attention to Clause N.1.3.2, which states that this response time of seven days can be curtailed keeping in view the limitation date for completing the assessment.

7.The other contention urged by the learned Senior Counsel for the appellant / assessee is that the department did not serve a copy of the draft assessment order along with the show cause notice. The learned standing counsel for the department would argue that the assessee was not entitled to draft assessment order.

8.We carefully considered the rival contentions and went through the materials on record as well as the statutory provisions. Let us examine the second contention first. Section 144B(1)(xvi) and (xxi) of the Income Tax Act read as follows:-

“Faceless Assessment. 144B. (1) Notwithstanding anything to the contrary contained in any other provision of this Act, the assessment, reassessment or recomputation under sub-section (3) of section 143 or under section 144 or under section



WEB COPY



W.A.(MD)No.1024 of 2025

147, as the case may be, with respect to the cases referred to in sub-section (2), shall be made in a faceless manner as per the following procedure, namely:—

(xvi) upon receipt of the income or loss determination proposal, as referred to in sub-clause (a) of clause (xii) or clause (xv), as the case may be, the National Faceless Assessment Centre may, on the basis of guidelines issued by the Board,—

(a) convey to the assessment unit to prepare draft order in accordance with the income or loss determination proposal, which shall thereafter prepare a draft order; or

(b)”

“(xxi) in case of an eligible assessee, where there is a proposal to make any variation which is prejudicial to the interest of such assessee, as mentioned in sub-section (1) under section 144C, the National Faceless Assessment Centre shall serve the draft order referred to in clause (xx) on the assessee;”

The term “eligible assessee” has been defined in Section 144C(15)(b) of the Act as follows:

“(15)For the purposes of this section,-

"eligible assessee" means,-

(i)any person in whose case the variation referred to in sub-section (1) arises as a consequence of the order of the Transfer Pricing Officer passed under sub-section (3) of section 92-CA; and

(ii)any foreign company.]”



W.A.(MD)No.1024 of 2025

WEB COPY

9.From a plain reading of Clause XVI of Section 144B(1) and Clause (xxi) of Section 144B(1), one can conclude that a copy of the draft order is not required to be served unless the assessee is an “**eligible assessee**”. Admittedly, the appellant herein is not an “eligible assessee” within the statutory meaning of term. An eligible assessee alone has to be served with draft assessment order referred to under Clause (xxi) of Section 144B(1) when a variation is proposed to be made that is prejudicial to the interest of the assessee. The Hon'ble Division Bench of Kerala High Court in its decision in **Joint Commissioner of Income Tax vs Sujatha Revikumar** (WA.No. 2156 of 2024 vide order dated 12.01.2024) has also taken the same view. We hold that since the appellant is not an eligible assessee, they are not entitled to receive copy of the draft assessment order. We, therefore, do not find any merit in the second contention.

10.Coming to the first contention, there is considerable force in the argument of the learned Senior Counsel that the appellant ought to have been given adequate time to respond. The Standard Operating Procedure (SOP) framed under Section 144B of the Act delineates the procedure for



W.A.(MD)No.1024 of 2025

making the assessment. When the SOP itself fixes the response time as seven days, normally, it should not be curtailed. If the assessing officer curtails the response time, the notice itself should indicate the reason for curtailment and the said reason will be subject to judicial review. The department cannot justify the curtailment for the first time in writ proceedings.

11.However, we are not able to hold the curtailment made in contravention of the SOP against the department. This is for the simple reason that the assessee did not plead prejudice in the first instance. According to the assessee, on account of such curtailment, there was deprivation of sufficient opportunity leading to violation of the principles of natural justice. Complaint that due opportunity was not given must be placed on record before the next stage in the process commences. If the assessee, without any protest or demur, participates in the subsequent stages, he cannot complain of breach of the principles of natural justice when the final order turns out to be adverse. The court will then conclude that the assessee took his chance. Having taken chance, he cannot plead that he had been wronged. If the assessee in response to



W.A.(MD)No.1024 of 2025

the show cause notice dated 23.03.2024 had given only interim reply and sought further time, then probably, the assessee would have succeeded before us and we would have directed the department to revisit the matter.

12.The assessee had filed their reply on 25.03.2024. We carefully went through the same. It is a detailed reply containing issue-wise submissions to pointed questions set out in the show cause notice. The assessee has neither pleaded prejudice nor sought for further time in his reply. The concluding portion of the reply reads as follows:

“We have submitted our replies to all your comments made in the show cause notice with all documentary evidence to your satisfaction. You may take the letter as our objections to your proposed additions..”

The final para speaks for itself. It is a clear indication that the assessee had said everything that they wanted to say. Having said so, they cannot now allege that sufficient opportunity was not given.

13.The assessee sought personal hearing. This was duly granted. Since this opportunity has also been given, we are not able to conclude



W.A.(MD)No.1024 of 2025

that there has been violation of principles of natural justice. We concur with the view taken by the learned Single Judge that the assessee should rather avail the appeal remedy. If the assessee had not filed any appeal already, we extend the time limit for filing appeal by four more weeks from the date of receipt of copy of this order. It is always open to the assessee to press for interim stay also. If the assessee is aggrieved by the terms of the interim stay, the assessee can come to this Court again for variation of terms. The assessee is also at liberty to seek remedy under Section 220(6) of the Income Tax Act.

14. With the aforesaid liberty, the order of the learned Single Judge is sustained and the writ appeal is dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

(G.R.S. J.) & (K.R.S. J.)
25.06.2025

NCC : Yes/No
Index : Yes / No
Internet : Yes/ No
ias



WEB COPY



W.A.(MD)No.1024 of 2025

G.R.SWAMINATHAN, J.
and
K.RAJASEKAR, J.

ias

W.A.(MD)No.1024 of 2025

25.06.2025