IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.02.2026

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.Nos.29063 & 29065 of 2023
and
W.M.P.Nos.28649 & 28652 of 2023

Rajaratnam Sabapathy ... Petitioner in both W.Ps

Vs.

1. The Additional Commissioner of Income-tax
   Central Circle,
   Central Range – 1,
   Room No.310, New Building – III Floor,
   Investigation Building,
   No.46 (Old No.108), Mahatma Gandhi Road,
   Chennai, Tamil Nadu – 600034.

2. The Assistant / Deputy Commissioner of Income Tax,
   Central Circle – 1(2), 3rd Floor, Investigation Building,
   No.46 (Old No.108), Mahatma Gandhi Road,
   Chennai, Tamil Nadu – 600 034. ... Respondents in both W.Ps

Prayer in W.P.No.29063 of 2023: Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorari, calling for the records in DIN & Notice No: ITBA/PNL/F/271D/2023-24/1056009503(1) dated 08.09.2023 on the file of the 1st Respondent relating to the A.Y.2021-22 and quash the same.

Prayer in W.P.No.29065 of 2023: Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorari, calling for the records in DIN & Notice No: ITBA/PNL/F/271E/2023-24/1056037449(1) dated 08.09.2023 on the file of the 1st Respondent relating to the A.Y.2021-22 and quash the same.

For Petitioner in both W.Ps	:	Mr.R.Sandeep Bagmar
For Respondents in both W.Ps	:	Mr.A.P.Srinivas Senior Standing Counsel and Mr.A.N.R.Jayaprathap Junior Standing Counsel

COMMON ORDER

This is the second round of litigation before this Court.

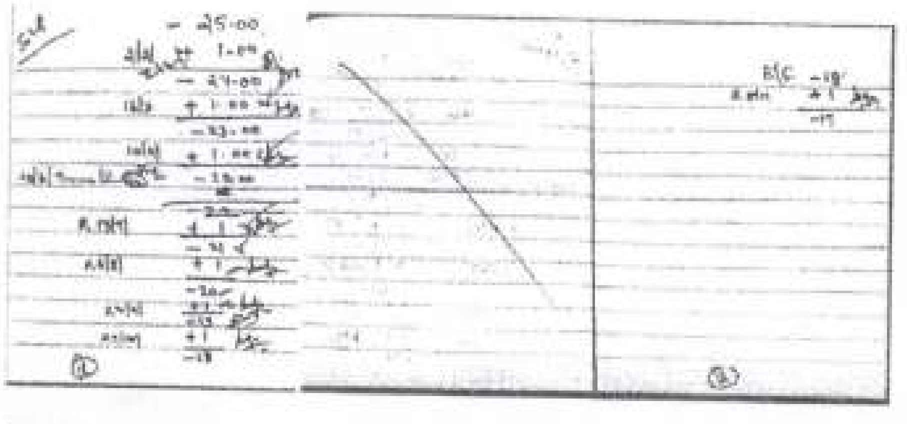
2. In these writ petitions, the petitioner has challenged the impugned orders passed by the 1st respondent on 08.09.2023, wherein penalty has been imposed against the petitioner under Sections 271D and Section 271E of the Income Tax Act, 1961 for the Assessment Year 2021-2022 after the Assessment Order dated 30.12.2022 was passed for the same assessment year.

3. On 18.01.2023, the petitioner was issued with personal hearing notices for proceeding under Section 274 read with Section 271(D) and Section 274 read with Section 271E of the Income Tax Act, 1961.

4. The challenge to the impugned orders is primarily on the ground that there are violation of Principles of Natural Justice, as the petitioner was not allowed to cross-examine his employee namely Antony Francis Julian.

5. A statement was recorded from the said employee during the search conducted between 01.12.2021 and 05.12.2021 in the petitioner's business premises, which is extracted below:-

> ***"Q 27. As deposed by you in response to the question number 24, you have stated that the books seized vide annexure ANN/SR/SSSLLP/B&D/S-2 contains details about the loan taken from a party. Please explain how the loan was received and the loan amount and repayment details after going through the written pages.***



Ans 27. *Sir, I am not aware of how the loan was received from the party. The MD only handed over the book to me for safekeeping. However, I can explain the contents of the written pages in the book shown to me.*

The noting made on the top left corner of the page numbered 1 of this book is 'SLP' which denotes the party name Swarna Shilpi.

'-25' denotes the loan taken from the party amounting to Rs. 25 crores. Further, every entry made with '+' sign denotes a repayment. '2/2/ +1' denotes a re-payment of Rs. 1 crore by us and the date of payment is 2nd February. The last entry denotes the latest repayment of Rs. 1 crore made on 08/11/2021 and the current remaining balance to be repaid is Rs. 17 crore. This loan was taken in 2021, so all the dates are pertaining to year of 2021 only."

6. Earlier, the petitioner approached this Court in W.P.No.22449 of 2023 for a mandamus to direct the respondents to furnish certain documents to the petitioner, after the petitioner sent a representation dated 12.08.2023 and a reply dated 23.08.2023 to the notice issued to the petitioner on 21.07.2023 under Section 274 read with 271D of the Act. In Paragraph No.10.18 of the said reply, the petitioner stated as under:-

> *"10.18 In the event, the Hon'ble Addl. CIT, Central Range - 1, desired that the penalty is still exigible in my case, I may be provided an opportunity to cross-examine Shri. Julian, from whom the seized notebook and his subsequent statement which are relied upon by the AO in arriving at the conclusion that I have availed loan of Rs.25,00,00,000/- from Shri. Rakesh Kumar and the same was applied in making on money payment towards purchase of property including the interest and loan repaid."*

7. It is in this background, the impugned penalty orders have been passed by the 1st Respondent.

8. The learned counsel for the petitioner would submit that the person from whom Rs.25,00,00,000/- was allegedly taken as a cash loan, namely

Shri. Rakesh Kumar of M/s. Swarna Shilpi, has denied having given any loan to the petitioner. It is therefore submitted that the statement of the said Antony Francis Julian dated 04.12.2021 has to be discarded without cross-examination as it was mandatory, which has been denied. Hence, it is prayed that the impugned orders be quashed.

9. The Learned Senior Standing Counsel for the respondents, on the other hand, would submit that the impugned orders are well-reasoned and therefore, do not warrant any interference. It is further submitted that the petitioner has an alternative remedy by way of an appeal before the appellate authority under Section 246A of the Income Tax Act, 1961 and hence, these writ petitions should be dismissed.

10. Considering the arguments advanced by the learned counsel for the petitioner and learned Senior Standing Counsel for the respondents, I am of the view that once statement was recorded from the aforesaid employee (Antony Francis Julian) of the petitioner on 04.12.2021, it was incumbent on the part of the petitioner to have sent a letter immediately distancing from the statements recorded from the said employee. In any event, even after the receipt of the aforesaid statement, the petitioner should have sent a letter

along with an affidavit from the said employee withdrawing the statements recorded on 04.12.2021.

11. It is inconceivable how an employee of the petitioner can be cross examined by the petitioner if the employee continued to be in service of the petitioner even after the statement was recorded on 04.12.2021. In any event, the statement of the said employee merely indicates that he was not aware of how the loan was received from the party and that the M.D. only handed over the book for safe keeping and that the said employee could explain the contents of the written pages in the book shown to him.

12. That apart, in the written submission dated 21.03.2022, it was stated as under:

*"**Book No.10 & 11:***

Mr.Antony Francis Julian, Assistant General Manager, Purchase section at Saravana Stores jewel (Super LLP), had maintained diary stated as Book No.10 & 11 in which he has made entries of certain receipts & payments. These books are Kaccha books and the entries in it are without proper evidence. The two books are stated to be for the period 26-08-2014 to 02-08-2017 and 16-08-2017 to till date. The total receipts as per *the said books works out to Rs.70,49,83,994/-. The entries made in these books are not completely verifiable. At the best, it could be taken as a record of unaccounted receipts of Rent from shops, cash from scrap sales, cash from weighing machines & toy machines and receipts towards bogus labour bills (jewellery making charges bills).*

5. Cash loan stated to have been taken from Rakesh of Swarna Shilpi:

Cash of Rs.25 crores was stated to have been received from Rakesh of Swarna Shilpi during December 2020 & Jan 2021 for meeting out the unaccounted consideration paid for the purchase the property at Perambur in the name of Smt.Selvakumari & the property at No.170/2A2, Uthangudi Village, Madurai East Taluk, Madurai. It is also stated repayment of Rs.8 crores was made by cash. No such repayment of Rs.8 Crores had taken place. Out of the above stated excess stock of Rs.33,46,13,562, sales have been happening and the proceeds out of it to an extent of Rs.17 Crores was parked with Rakesh of M/s. Swarna Shilpi. When the requirement for purchase of property at Perambur and Madurai happened, the accumulated cash with Rakesh i.e., Rs.17 Crores was received from him. The balance Rs.8 Crores was out of sale of excess stocks as explained above."

13. Thus, the petitioner was aware of the statements recorded on

04.12.2021 from the said Antony Francis Julian.

14. By a reply dated 01.02.2023, the petitioner further stated as under:

"2. As for the statement recorded from me on 04.12.2021, a statement recorded on 01.12.2021 from Mr. Julian, one of my employees was shown to me. In that sworn statement he had stated that a seized material ANN/SR/SSSLLP/B&D/S-2, was given by me to him for keeping in safe custody and the book contained details of loan taken by our group from party named 'Swarna Shilpi'. In the first place, it is not known how Mr. Julian stated so, as I never discussed nor shared details of the entries in the note book with him. I am not in the habit of discussing or sharing such information with any of my employees including Mr. Julian. It must be his presumption or he had stated so after getting 'typical trade mark of treatment' from the search party. However, I did not read what was recorded in my statement, for the reasons stated above, and signed it on dotted lines of whatever was recorded. But, the fact was that my answers to Q. No.53 to 59 of the statement recorded from me on 04.12.2021 with regard to alleged receipt of Rs. 25 Crores from Mr. Rakesh Kumar of Swarna Shilpi were not correct."

15. As mentioned above, it is inconceivable how an employee who remains on the rolls of the petitioner can be cross-examined by the petitioner. Therefore, there is no merit in the challenge to the impugned orders, and consequently, these writ petitions are liable to be dismissed.

16. However, since the petitioner filed the writ petitions almost immediately after the impugned orders were passed, liberty is given to the petitioner to file an appeal before the Appellate Authority within 30 days from the date of receipt of a copy of this order.

17. If such an appeal is filed within such time, the Appellate Authority shall dispose of the appeal on merits without further reference to limitation and without considering the observations made in this order.

18. These Writ Petitions stand dismissed with the above liberty. Consequently, connected miscellaneous petitions are closed. No costs.

02.02.2026

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Neutral Citation : Yes / No

To

1. The Additional Commissioner of Income-tax
   Central Circle,
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C.SARAVANAN, J.

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