



W.P.No.23611 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.11.2023

Coram

The Honourable **Mr.Justice Krishnan Ramasamy**

W.P.No.23611 of 2022

&

W.M.P.No.22578 of 2022

+

W.M.P.No.25265 of 2023

Antony Alphonse Kevin Alphonse

...Petitioner

Vs.

The Income Tax Officer,
Non-Corporate Ward-4(1)
Income Tax Office,
66 & 67 Race Course Road,
Coimbatore-641 012.

...Respondent

Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari to call for records in DIN : ITBA/AST/S/143(3)/2022-23/1044346296(1) dated 30.07.2022 on the file of the respondent relating to A.Y. 2018-19 and to quash the same.

For Petitioner : Mr.G.Baskar
For Respondent : Mr.R.S.Balaji,
Senior Standing Counsel
assisted by Ms.S.Premalatha
Junior Standing Counsel



ORDER

The challenge in this Writ Petition is to the assessment order passed by the respondent for the Assessment Year 2018-19 dated 30.07.2022.

2. The facts of the case in short are as follows:-

i) The petitioner is an assessee on the files of the respondent under the provisions of Income Tax Act, 1961 (hereinafter, referred to as 'I.T. Act') and for AY 2018-19, he filed ITR-3 on 05.07.2018, declaring his gross total income at Rs.7,37,340/-. However, the petitioner's case was selected for limited scrutiny under e-Assessment Scheme in respect to the issue of agricultural income and a notice under Section 143(2) dated 28.08.2019 was issued, which was followed by a show cause notice dated 04.03.2021, calling upon the petitioner to file reply through registered e-filing account on 15.03.2021. The petitioner, on receipt of such show cause notice e-filed response on 15.03.2021 at 07.58 p.m. along with supportive documents,



W.P.No.23611 of 2022

however, the respondent, without considering the details filed by the petitioner passed an order of assessment on 15.03.2021, by treating the gross total income of the petitioner as Rs.2,56,26,800/- and raised a demand of Rs.2,60,75,095/- after adjusting the self-assessment tax of Rs.1,64,210/-.

ii) Aggrieved against the said order of assessment dated 15.03.2021, the petitioner filed a Writ Petition before this Court in W.P.No.8379 of 2021, and this Court, vide order dated 01.04.2021, quashed the said assessment order dated 15.03.2021 and remitted the matter for passing a speaking order after considering the objections filed by the petitioner. However, the respondent, pursuant to the order of assessment dated 15.03.2021, raised a demand vide notice dated 01.02.2022, to which, the petitioner, sent a communication stating that the assessment order dated 15.03.2021 was quashed by this Court and also enclosed a copy of the order passed by this Court in W.P.No.8379 of 2021 dated 01.04.2021. Thereafter, the respondent issued a notice dated 06.07.2022 followed by clarification letters dated 07.07.2022 and 19.07.2022 seeking certain details as sought for vide notice dated 06.07.2022 and the petitioner, in response to the said



W.P.No.23611 of 2022

notices filed detailed submissions on 18.07.2022 and 22.07.2022, however, the respondent without even considering the details furnished by the petitioner proceeded to frame an order of assessment dated 30.07.2022, treating Rs.2,34,49,460/- as unexplained cash under Section 68 of I.T.Act. Challenging the said assessment order, dated 30.07.2022, the present Writ Petition is filed.

3. Mr.G.Baskar, the learned counsel for the petitioner would submit that initially, the assessment order was passed on 15.03.2021, and since the same was passed without even providing opportunity of personal hearing to the petitioner, the same was challenged in W.P.No.8379 of 2021, and this Court vide order dated 01.04.2021, quashed the said order of assessment dated 15.03.2021 and remitted the matter back for re-consideration, and despite the same, the respondent, based on the earlier assessment order dated 15.03.2021, issued a notice of demand dated 01.02.2022, and the petitioner, on receipt of such demand notice, sent a communication dated 03.02.2022, stating that the earlier assessment order dated 15.03.2021 was quashed by this Court and the petitioner also enclosed a copy of the order



W.P.No.23611 of 2022

passed by this Court in W.P.No.8379 of 2021, dated 01.04.2021, however, the respondent, who is not aware of quashment of the assessment order dated 15.03.2021 till 01.02.2022 once again issued a notice on 06.07.2022, seeking certain details, which was followed by clarification letters dated 07.07.2022 and 19.07.2022 seeking for very same details as sought for vide notice dated 06.07.2022, however, with a slight modification and though the petitioner, by means of reply dated 18.07.2022 and 22.07.2022, furnished the details sought for, the respondent without even considering the details furnished by the petitioner and without even affording an opportunity of personal hearing passed the impugned assessment order dated 30.07.2022.

3.1 The learned counsel appearing for the petitioner would submit that the grievance of the petitioner is that, without providing an opportunity of personal hearing, for the second time, the impugned order of assessment came to be passed. The learned counsel further pointed out that the Officer, who issued the notices/clarification letters dated 06.07.2022, 07.07.2022 and 19.07.2022 is not the one, who passed the impugned order and the impugned order has been passed by an Officer, who took charge in the place



W.P.No.23611 of 2022

of previous Officer and though it is the case of the respondent that the petitioner's files were transferred from faceless assessment mode to physical mode for making assessment through Jurisdictional Assessing Officer, in terms of Section 129 of I.T. Act, the new Assessing Officer (AO) who took charge of the Office in the place of previous Assessing Officer is supposed to have informed the same, in which case, the petitioner would have asked for an opportunity for rehearing and without informing the petitioner with regard to the change of AO and without providing any opportunity, the impugned order came to be passed.

3.2 Therefore, the learned counsel would submit that the impugned order came to be passed in gross violation of principles of natural justice and though the said order passed by the respondent is an Appealable order, since the same was passed in violation of principles of natural justice, the petitioner has no efficacious remedy, except to approach this Court by way of filing Writ Petition seeking to quash the same. However, the learned counsel submitted that though the impugned order is challenged on very many grounds, the main grievance of the petitioner is only with regard to



W.P.No.23611 of 2022

non-provision of opportunity of personal hearing, he would confine his prayer only with regard to said aspect and prayed that the Writ Petition may be disposed of by directing the respondent to grant an opportunity of personal hearing to the petitioner.

4. Per contra, Mr.R.S.Balaji, learned Senior Standing Counsel assisted by Ms.S.Premalatha learned Junior Standing Counsel for the respondent while reiterating the averments set out in the counter affidavit filed by the respondent would submit that the assessment order dated 30.07.2022 has been passed only after affording sufficient opportunities to the petitioner and though in terms of Section 129 of I.T. Act, which mandates that the assessee has to be reheard when there is change of AO, since no attempt was made by the petitioner seeking for such an opportunity, the petitioner cannot come before this Court and say that impugned order was passed without affording any opportunity to the petitioner and the same is in violation of principles of natural justice. However, learned Senior Standing Counsel submits that if any order is passed by this Court, the same would be complied with by the respondent in



accordance with law.

5. Heard the learned counsel appearing for the petitioner and the learned Senior Standing Counsel for the respondent and perused the materials placed on record.

6. It is an admitted fact that the earlier assessment order dated 15.03.2021 was quashed by this Court, in W.P.No.8379 of 2021 vide order dated 01.04.2021, since the same was passed in violation of principles of natural justice, as no opportunity of hearing was provided to the petitioner, and this Court, while quashing the impugned order of assessment has remanded the matter back to the respondent to pass a speaking order after considering the reply filed by the petitioner on 15.03.2021. The respondent, in compliance of the direction issued by this Court in W.P.No.8379 of 2021, ought to have granted an opportunity of personal hearing to the petitioner before passing the present impugned assessment order dated 30.07.2022. Per contra, the respondent, in furtherance of the assessment order dated 15.03.2021, issued a notice of demand dated 01.02.2022 and only when the



W.P.No.23611 of 2022

petitioner by way of a communication dated 03.02.2022, has brought to the notice of the respondent that the earlier assessment order was quashed by this Court by order dated 01.04.2021 and also enclosed a copy of the order passed in W.P.No.8379 of 2021, the respondent became aware of the same, even after the same, he has not initiated the assessment proceedings, and after a lapse of five months, issued a notice dated 06.07.2022, calling for certain details by stating that the case is getting time barred on 30.07.2022, and subsequently, by way of clarification letter dated 07.07.2022, sought for certain details, which were already sought for vide notice dated 06.07.2022 and again by way of another clarification letter date 19.07.2022 sought for further details and the petitioner's in response to those clarifications had submitted replies dated 18.07.2022 (seeking for an opportunity to file further documents) and 22.07.2022 (furnishing all details) respectively, but, the respondent, without considering those details filed by the petitioner, and without affording any opportunity of personal hearing, passed the present impugned order of assessment dated 30.07.2022.

6.1 Further, it is seen that the Officer, who issued the notice and



W.P.No.23611 of 2022

clarification letters dated 06.07.2022, 07.07.2022 and 19.07.2022 is not the one and the same, who passed the impugned order, and though it is the contention of the respondent that the petitioner's case files were transferred from faceless assessment mode to physical mode to make assessment through the Jurisdictional Assessment Officer under Section 129 of I.T. Act and in terms of said Section, the respondent herein, being the Assessment Officer has passed the present impugned order of assessment, as rightly pointed out by the learned counsel for the petitioner even the provisions of said Section mandates that the assessee has to be re-heard in case of change of AO. In this context, it would be apposite to refer Section 129 of I.T. Act, which reads as under:-

“Whenever in respect of any proceeding under this Act an Income-tax authority ceases to exercise jurisdiction and is succeeded by another who has and exercises jurisdiction, the Income-tax authority so succeeding may continue the proceeding from the stage at which the proceeding was left by his predecessor ;

:Provided that the assessee concerned may



demand that before the proceeding is so continued the previous proceeding or any part thereof be re-opened or that before any order of assessment is passed against him, he be re-heard."

6.3 Reverting to the present case, it is not in dispute that no notice, subsequent to the receipt of reply from the petitioner, was issued to the petitioner and further, no evidence has been produced by the respondent to show that the notice was issued to the petitioner for personal hearing before passing the impugned order and the opportunities, that were stated to have been provided to the petitioner were only for the purpose of calling forth certain details/reply from the petitioner, those opportunities, cannot be deemed to be an opportunities of hearing to the petitioner since the question of affording opportunity of personal hearing would come into picture only after the receipt of reply/objections from the petitioner.

6.4 Thus, in the present case, it is evidently clear that after the petitioner filed reply dated 22.07.2022 to the clarification sought for by the respondent finally vide letter dated 19.07.2022, the petitioner has not been



W.P.No.23611 of 2022

afforded with any opportunity of personal hearing and in these circumstances, the impugned order came to be passed, which would per se prove that the order has been passed in clear violation of principles of natural justice. Even assuming that the impugned order is passed by an incumbent Officer, who continued the proceedings in the place of earlier Assessing Officer and even the earlier Assessing Officer, who existed before the incumbent Officer has not issued any notice for personal hearing after the petitioner's filed reply. Therefore, the contention of the learned Senior Standing Counsel for the respondent-Department that the petitioner has failed to make a use of the opportunity granted under Section 129 I.T.Act, as he has not sought for an opportunity of rehearing is untenable and it would only means to putting the cart before horse.

6.5. Thus, for the reasons stated herein above, the impugned order is liable to be set aside.

7. Accordingly, the Writ Petition is allowed, the impugned order is



W.P.No.23611 of 2022

set aside and the matter is once again remanded back to the respondent for re-consideration of the assessment proceedings after providing an opportunity of personal hearing to the petitioner. Since the learned counsel for the petitioner requested this Court to fix a date for personal hearing, this Court is inclined to fix the date of personal hearing of the petitioner on 20.12.2023, on which date, the petitioner shall appear before the respondent along with supportive documents, if any and the respondent, subject to his convenience, may hear the petitioner on the aforesaid date or in case of any difficulty, he may, re-fix the hearing date and after hearing the petitioner in full and perusing the documents shall pass orders in accordance with law. No costs. Consequently, connected Writ Miscellaneous Petitions are closed.

20.11.2023

sd

Index : yes/no

Neutral Citation : yes/no

Note : Issue order copy on .11.2023.

13/15



W.P.No.23611 of 2022

To

The Income Tax Officer,
Non-Corporate Ward-4(1)
Income Tax Office,
66 & 67 Race Course Road,
Coimbatore-641 012.

Krishnan Ramasamy,J.,

14/15



W.P.No.23611 of 2022

sd

W.P.No.23611 of 2022

20.11.2023

15/15