In the High Court of Judicature at Madras

Dated : 04.8.2021

Coram

The Honourable Mr.Justice T.S.SIVAGNANAM

and

The Honourable Mr.Justice SATHI KUMAR SUKUMARA KURUP

Writ Appeal No.1872 of 2021 & CMP.No.11916 of 2021

The Deputy Commissioner of
Income Tax, Circle 1(1), Income
Tax Office, No.3, Gandhi Road,
Salem-7. ...Appellant

Vs

Salem Sree Ramavilas Chit
Company Private Limited, rep.by
its President Mr.N.K.Ramalingam ...Respondent

APPEAL under Clause 15 of the Letters Patent against the order dated 04.2.2020 made in W.P.No.1732 of 2020.

For Appellant: Mr.A.P.Srinivas, SSC
For Respondent: Mr.M.P.Senthilkumar

Judgment was delivered by T.S.SIVAGNANAM,J

We have elaborately heard Mr.A.P.Srinivas, learned Senior Standing Counsel appearing for the appellant herein and Mr.M.P.

Senthilkumar, learned counsel accepting notice for the respondent herein.

2. This appeal by the Department is directed against the order dated 04.2.2020 in W.P.No.1732 of 2020 filed by the respondent herein.

3. The respondent herein filed the said writ petition challenging the assessment order dated 27.12.2019 under the provisions of the Income Tax Act, 1961 (for short, the Act) for the assessment year 2017-18. The said writ petition was heard and orders were reserved on the date of admission itself and the impugned order has been pronounced on 04.2.2020. The ultimate direction issued in paragraph 18 of the impugned order, at the first blush, appears to be an innocuous direction.

4. However, the learned Senior Standing Counsel appearing for the appellant would contend that the observations and findings rendered by the learned Single Judge have far reaching consequences and that they have got cascading effect on other matters, which are pending before various forums. It is further contended that the learned Single Judge made certain observations commenting upon the efficacy and efficiency of the E-Proceeding facility introduced by the Income Tax Department. It is submitted that no opportunity was granted to the

appellant to file a counter affidavit, as the said writ petition was heard and orders were reserved on the day when it came up for admission. Furthermore, the learned Single Judge also touched upon the merits of assessment and made certain observations, which is not done in a writ proceeding, especially when disputed questions of fact are involved. Therefore, it is his further submission that the impugned order passed in the said writ petition and the observations contained therein are liable to be interfered with.

5. Per contra, Mr.M.P.Senthilkumar, learned counsel appearing for the respondent herein submits that several records were placed before the learned Single Judge, many of which are not being enclosed in the typed set of papers by the Revenue, that the respondent herein was rightly able to convince the learned Single Judge that there has been violation of the principles of natural justice and that therefore, the learned Single Judge rightly remanded the matter to the Authority concerned to afford a fresh opportunity.

6. The learned counsel for the respondent herein has drawn our attention to the averments set out in paragraphs 3, 6 and 7 of the affidavit filed in support of the said writ petition. It is submitted that the respondent herein rightly gave a reply on 17.2.2017 by way of online communication furnishing complete details and the Income Tax

Department (ITD) was convinced with the same and did not raise any further query. It is also submitted that the entire cash deposit was explained with reference to cash collections from the subscribers supported with reconciliation statements. According to him, the respondent herein has been filing its returns regularly by way of electronic returns into the web portal of the ITD and all the details have been furnished as to in which bank account, the amounts were deposited.

7. The learned counsel for the respondent herein also submits that the respondent herein also responded to the notice dated 20.6.2019 issued under Section 142 of the Act and that the appellant herein namely the Assessing Officer, without going into the details submitted, completed the assessment by order dated 27.12.2019, which was challenged in the said writ petition and the learned Single Judge rightly allowed the said writ petition with the observations contained therein.

8. We have carefully perused the materials placed on record.

9. At the outset, we need to point out that when an effective alternate remedy is available under the statute, the Writ Courts are slow in entertaining a writ petition under Article 226 of The Constitution of India thereby interdicting the procedure provided under

the relevant Statute. In several decisions of the Hon'ble Supreme Court, it has been pointed out that the Writ Courts seldom entertain petitions when alternate remedies are available especially in taxing statutes. Bearing this cardinal principle in mind, if we examine the case as projected by the learned counsel for the respondent herein, we find that it is a case where the respondent herein ought not to have been permitted to bypass the appeal remedy available to them under the provisions of the Act.

10. In the affidavit filed in support of the said writ petition, the respondent herein challenged the order dated 27.12.2019 firstly on the ground of violation of the principles of natural justice and secondly on the ground that the assessment and the demand are vitiated on account of total non application of mind. Thirdly, it is submitted that the addition made under Section 69A of the Act on the demonetized cash deposit by the respondent herein in the bank is erroneous, as the respondent herein is in the business of conducting chits in the regular course of business as per the Chit Funds Act, that the balance of Specified Bank Notes (SBN) available as on 08.11.2016 was only deposited and that the entire cash deposit was explained with reference to the cash collected from the subscribers prior to 08.11.2016 supported with reconciliation statements. Similar is the

challenge to the addition under Section 69A of the Act stating that when there are high pitched assessments without proper application of mind, the Assessing Officer cannot mechanically complete the assessment.

11. If these were the grounds raised namely (i) there has been violation of the principles of natural justice, (ii) there has been total non application of mind and (iii) the addition made under Section 69A of the Act was uncalled for, obviously it is a matter where the factual matrix needs to be adjudicated threadbare. Such an exercise cannot be done by a Writ Court and should not be permitted to be done.

12. We have carefully perused the impugned order to ascertain as to whether the learned Single Judge touched upon the merits of the case of the respondent herein – assessee. The discussion in the impugned order starts from paragraph 13 and in paragraph 14, the learned Single Judge observed that the Government of India demonetized Rs.500/- and Rs.1000/- notes on 08.11.2016. Thereafter, the learned Single Judge took note of the cash collected by the respondent herein to the tune of Rs.57,85,655/- between 01.11.2016 and 08.11.2016 and made an observation that this collection did not appear to be unusual as compared to the collections made during November 2015.

13. It was further observed by the learned Single Judge in the impugned order that out of the total collection of Rs.57,85,655/- and a closing cash of Rs.38,72,374/- as on 31.10.2016, the respondent herein deposited the amount of Rs.26,77,716/-, which was also not in variance with the cash deposits made by the respondent herein during the preceding financial year. The learned Single Judge also observed that collection of monthly subscription/dues by the respondent herein during the aforesaid period appeared to be reasonable as compared to be the same period during 2015.

14. If such is the finding rendered by the learned Single Judge, the direction remanding the matter to the appellant herein for a fresh consideration is an empty formality. When the Court is satisfied that there has been violation of the principles of natural justice, the Court shall be careful not to make any observation touching upon the merits of the matter so that it will prejudice the mind of the authority concerned, who is to take a decision. It is a settled legal principle that no person, be it a court or a higher official, can direct an Assessing Officer to complete the assessment in a particular manner, because the Assessing Officer has to independently decide an issue and should not be guided by any terms and conditions issued by the superior authority. The Assessing Officer should be only guided by judicial

precedents and should be guided by judicial discipline. Hence, the exercise directed to be done in paragraph 18 of the impugned order is held to be not sustainable.

15. Furthermore, we find that in paragraph 16, the learned Single Judge proceeded to record a finding that the respondent herein, prima facie, demonstrated that the assessment proceedings resulted in distorted conclusion on fact that the amount collected by the respondent herein during the period was huge and remained unexplained by the respondent herein and therefore, the same was liable to be treated as unaccounted money in the hands of the respondent herein under Section 69A of the Act. It was also recorded by the learned Single Judge that the assessment order making the respondent herein liable to tax at the maximum marginal rate of tax by invoking Section 115BBE of the Act placing reliance on the decision of the Hon'ble Supreme Court in the case of ***Smt.Shrilekha Banerjee Vs. CIT [reported in AIR 1964 SC 697]*** appeared to be misplaced. If such is the observation or finding, obviously we cannot expect the Assessing Officer to take an independent decision in the matter.

16. The next aspect, which we have noted is with regard to the observation made by the learned Single Judge regarding the E-Governance implemented by the Government of India and more

particularly the E-Proceeding facilities under the provisions of the Act. In paragraph 15, the learned Single Judge gave a word of appreciation to the steps taken by the ITD and observed that it is a laudable step. However, in the next sentence, the learned Single Judge proceeded to record a finding that such assessments, without human interference, could lead to erroneous assessments if the officers were not able to understand the transactions and statement of accounts of an assessee without a personal hearing. Therefore, the learned Single Judge found fault with the appellant herein for not calling for a written explanation before proceeding to conclude that the amount collected by the respondent herein was unusual.

17. Firstly, the said writ petition, which was filed by the respondent herein, did not challenge the E-Proceeding facility introduced by the ITD nor any Notification issued by the Government of India in that regard. The prayer sought for in the said writ petition was for a Writ of Certiorari to quash the assessment order dated 27.12.2019. Hence, the said writ petition not being in the nature of a public interest litigation nor a writ petition where a declaratory relief was sought for against E-Proceeding facility, the observation contained in paragraph 15 needs to be eschewed.

18. Further, we find that in paragraph 17 also, there is an

observation made by the learned Single Judge with regard to E-Proceeding facility implemented by the ITD. For the reason stated above, the finding rendered in paragraph 17 of the impugned order also needs to be eschewed. Thus, taking note of what we have held in the preceding paragraphs, we are of the clear view that no useful purpose will be served by remanding the matter to the Assessing Officer for a fresh consideration.

19. The learned Senior Standing Counsel appearing for the appellant herein has drawn our attention to the Note on E-Proceeding, which was communicated to the respondent herein.

20. The relevant portions of the Note on E-Proceeding read as hereunder :

> *"1. As a part of e-governance initiative, to facilitate conduct of assessment proceedings electronically, Income Tax Department has developed the 'E-Proceeding' facility. It is a simple way of communication between the Department and the assessee in a hassle free manner, through electronic means, without the necessity to visit Income Tax Office for conduct of assessment proceedings. This new facility is also environment friendly as assessment proceedings have now become paperless.*

2. In assessment proceedings through the 'E-Proceeding' functionality, there is a seamless flow of letters, notices, questionnaires, orders, etc., from Assessing Officer to assessee' E-filing account. On receipt of Departmental communication, assessee is able to submit his response along with attachments, if any, by uploading the same on the E-filing portal. The response submitted by the assessee is also viewed by the Assessing Officer electronically. Thus, besides saving precious time of the taxpayer, 'E-Proceeding' also provides a 24X7 anytime/ anywhere convenient facility to submit response to the Departmental queries in course of assessment proceedings.

....

4. In case under 'E-Proceeding', hearing may be conducted manually in following situation(s):

I. Where books of accounts have to be examined; or

II. Where provision of Section 131 of the Income Tax Act, 1961 has been invoked; or

III. Where examination of witness is to be made by assessee or Assessing Officer; or

IV. Where a show cause notice

contemplating any adverse view is issued and assessee requests for personal hearing to explain the matter.

5. This taxpayer friendly measure has substantially reduced the compliance burden for assessees. The assessees who do not yet have an E-filing account, are requested to get themselves registered by following the simple instructions contained in (www. incometaxindiaefiling.gov.in) for having an E-filing account."

21.The E-Proceeding does not foreclose the conduct of a physical hearing, but has circumscribed four conditions, on which, such hearing shall be conducted manually. In terms of Clause 5 of the Note, the assessees, who did not have e-filing account, were requested to get themselves registered. Admittedly, the respondent herein registered themselves and returns were filed through e-portal and the response to the notice under Section 142 of the Act was sent through the e-portal. Therefore, it will be too late for the respondent herein now to state that all is not well with the E-Proceeding facility.

22. There is nothing placed before us to show that the respondent herein – assessee made a specific request in terms of paragraph 4 of the above Note stating that they require a physical hearing for a particular reason. In such circumstances, the sweeping

observations and remarks are not called for especially when the system has been implemented and all the assessees through out the country have switched over from manual procedure to e-procedure.

23. The Court can take judicial notice of the fact that all recruitments conducted by various specialized recruitment agencies as well as this Court have been accepting applications from candidates only as e-copies through e-portal and it has been many years since physical applications have been done away with. The e-filing of such applications for recruitment to various posts in this Court as well as the District Judiciary have made the process very transparent and user friendly. When such is the present state of affairs and when all persons have equipped themselves to handle such procedure, we feel that the observations made in paragraphs 15 and 17 of the impugned order are not required.

24. Thus, for all the above reasons, the writ appeal is allowed and the impugned order passed in the said writ petition is set aside. All observations and findings regarding the effectiveness of the E-Governance implemented by the ITD are set aside. Likewise, the observations and findings rendered in the impugned order touching upon the merits of the assessment are also set aside. Consequently, W.P.No.1732 of 2020 is dismissed. No costs. The connected CMP is

closed.

25. The respondent herein – assessee is granted liberty to file an appeal before the First Appellate Authority as against the assessment order dated 27.12.2019 and if such appeal is filed within four weeks from the date of receipt of a copy of this judgment, then the First Appellate Authority shall, while computing the limitation, exclude the period from 23.1.2020 till the date of filing of the appeal, which we have peremptorily fixed as four weeks from the date of receipt of a copy of this judgment. It is made clear that if the respondent herein fails to avail this opportunity within the period stipulated, then the benefit of this order will not enure to the respondent herein.

04.8.2021

Speaking Order
Index/Internet : Yes

RS

T.S.SIVAGNANAM,J
AND
SATHI KUMAR SUKUMARA KURUP,J

RS

WA.No.1872 of 2021 &
CMP.No.11916 of 2021

04.8.2021