

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 13TH DAY OF DECEMBER, 2021

PRESENT

THE HON'BLE MRS. JUSTICE S.SUJATHA

AND

THE HON'BLE MR. JUSTICE S.VISHWAJITH SHETTY

WRIT PETITION No.21638/2021 (T-IT)

BETWEEN:

MMG CONSTRUCTIONS LLP
617, FIRST FLOOR,
NEW KANTHARAJA, URS ROAD,
CHAMARAJA MOHALLA,
KUVEMPUNAGAR,
MYSURU 560 023.
THROUGH ITS MANAGING PARTNER
MR. JAYARAMU
S/O RAMEGOWDA,
AGED ABOUT 41 YEARS,
OCCUPATION: SERVICE,
R/AT -09, MMG PRADISE,
SY. NO.117/1A1, OLD 117/1,
SRIRAMPURA MYSORE-570 008.

... PETITIONER

(BY SRI.I.P.BANSAL, ADV. FOR SRI. B.S.BALACHANDRAN,
ADV.)

AND:

1. UNION OF INDIA
THROUGH THE SECRETARY,
MINISTRY OF FINANCE,
NORTH BLOCK,
NEW DELHI 110 001.
2. CENTRAL BOARD OF DIRECT TAXES,
SECRETARIAT BUILDING,
DEPARTMENT OF REVENUE, NORTH
BLOCK,
NEW DELHI-110 001.

REP. BY ITS - CHAIRPERSON.

3. THE ASSISTANT COMMISSIONER OF INCOME TAX,
CIRCLE 1(1) AND TPS,
ROOM NO.113, 1ST FLOOR,
REAC, MYSORE REAC,
MYSURU 570 008,
KARNATAKA.
4. ADDITIONAL/JOINT/DEPUTY/ASSISTANT
COMMISSIONER OF INCOME TAX/ INCOME-TAX
OFFICER,
NATIONAL FACELESS ASSESSMENT CENTRE,
ROOM NO.401, 2ND FLOOR,
E -RAMP, JAWAHARLAL NEHRU STADIUM,
DELHI 110 003.
5. COMMISSIONER OF INCOME TAX
(NAFAC)-1, NEW DELHI,
NATIONAL FACELESS ASSESSMENT CENTRE,
ROOM NO.401, 2ND FLOOR, E-RAMP,
JAWAHARLAL NEHRU STADIUM,
DELHI 110 003. ... RESPONDENTS

(BY SRI H.SHANTHI BHUSHAN, ASG FOR R1;
SRI K.V.ARAVIND, ADV. FOR R2 TO 5)

THIS WRIT PETITION IS FILED UNDER ARTICLE 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO DECLARE THAT PROVISIONS OF SUB-SECTION (8) OF SECTION 144B OF THE IT ACT ARE UNCONSTITUTIONAL. QUASH THE LETTER DATED 29.09.2021 ISSUED BY THE R3 IN DIN AND LETTER NO. ITBA/AST/ /F/17/2021-22/1036001532(1)(ANNEXURE-E) TO ASSUME JURISDICTION ON THE CASE OF THE PETITIONER FOR THE AY 2018-19 RELYING ON THE LETTER DATED 28.09.2021 ISSUED BY THE R5 AS IT CIRCUMVENTS THE PROVISIONS OF SECTION 144B(1) AND SECTION 127 OF THE IT ACT.

THIS PETITION COMING ON FOR HEARING ON INTERLOCUTORY APPLICATION THIS DAY, S.SUJATHA J., MADE THE FOLLOWING:

ORDER

This writ petition is directed against the assessment order dated 29.09.2021 passed by respondent No.3 for the assessment year 2018-19 along with the impugned demand notices issued under Section 156, Section 274 read with Section 270A and Section 274 read with Section 271AAC(1) of the Income Tax Act, 1961 ("the Act", for short) inter alia challenging the letter dated 29.09.2021 issued by respondent No.3 (Annexure-E) to assume jurisdiction in the case of the petitioner for the assessment year 2018-19 relying on the letter dated 28.09.2021 issued by the respondent No.5, further seeking for a declaration that sub-section (8) of Section 144B of the Act is unconstitutional.

2. Learned counsel Sri.I.P.Bansal representing the petitioner-assessee submits that the challenge made to the provisions of sub-Section (8) of Section 144B of the Act is not pressed. The said submission is placed on record. As such, now the relief is restricted only to the

challenge made to the assessment order passed by respondent No.3 and the notices issued thereof.

3. The petitioner claims to be a limited liability partnership [LLP] firm and is a Builder, Developer and Contractor. It transpires that for the assessment year under consideration i.e., 2018-19, it has filed its return of income under Section 139(4) of the Act, which was processed under Section 143(1) of the Act. Vide notice dated 22.09.2019 issued by the Assistant Commissioner of Income-Tax (e-Verification) under Section 143(2) of the Act, the petitioner was informed that its case has been selected for scrutiny on the issues relating to "income from real estate business" and "investment in immovable property" and the petitioner was instructed to further conduct the proceedings through e-portal. Thereafter by letter dated 15.10.2020 issued by the respondent No.4, the petitioner was informed that assessment proceedings pending in the case of the petitioner henceforth shall be completed under Faceless Assessment Scheme,

2019, pursuant to which the notice under Section 142(1) of the Act was issued. The jurisdictional Assessing Officer issued the notice dated 28.09.2021 under section 142(1) of the Act, calling upon the petitioner to furnish the documents and information on or before 29.09.2021 at 4.00 p.m.

4. It is the grievance of the petitioner that no reasonable opportunity was provided to furnish the reply to the notice along with the information and documents. The assessment order was concluded on 29.09.2021 in breach of principles of natural justice.

5. Learned counsel for the petitioner placing reliance on the judgment of the High Court of Bombay in the case of Vodafone India Limited -vs- Union of India¹ as well as the ruling of the Hon'ble Apex Court in the case of Magadh Sugar and Energy Limited - vs- The State of Bihar and Others² and the Circular No.F.No.225/97/2021/ITA-II dated 06.09.2021

¹ (2013) 40 Taxmann.com 545 (Bombay)

² 2021(5) KLT 667

submitted that the case on hand would fall under the exception to the rule of alternative remedy for violation of principles of natural justice. The notice issued on 28.09.2021 was generated at 5.46 p.m. and the short notice was provided to file objections by 29.09.2021. The petitioner - assessee has filed its reply on 29.9.2021. The Assessing Officer without considering the same has proceeded to pass the impugned assessment order under Section 143(3) of the Act, which is accompanied with notices issued under Sections 156, 274 read with 270A and 271AAC(1) of the Act. The status of the petitioner has been mentioned as "non-resident" in the impugned assessment order. Again a Corrigendum was issued on 30.09.2021 stating that assessment has been framed under Section 144 of the Act instead of Section 143(3) of the Act. Hence, learned counsel submits that notwithstanding a statutory appeal filed against the impugned assessment order, the same being in gross violation of the principles of natural justice, the

writ petition is maintainable. However, learned counsel undertakes before the court that the appeal filed by him before the Commissioner of Income Tax (Appeals) would be withdrawn subject to the assessment order impugned is annulled by this court and restored to the file of the Assessing Officer.

6. Learned counsel Sri.K.V.Aravind appearing for the Revenue submits that the status of the assessee whether resident or non-resident has resulted in passing the impugned assessment order. However, learned counsel is not in a position to dispute the arguments advanced by the learned counsel for the assessee, inasmuch as, breach of the principles of natural justice in providing less than 24 hours time for giving reply to the notice issued by the Assessing Officer.

7. We have given our anxious consideration to the arguments advanced by the learned counsel appearing for the parties and perused the material on record.

8. It is ex facie apparent that the notice under Section 142(1) of the Act was issued by respondent No.3 on 28.09.2021 calling upon the petitioner to file his reply on or before 29.09.2021 at 04.00 p.m. The respondent No.3 has issued the impugned letter dated 29.09.2021 addressed to the petitioner informing that the respondent No.3 had assumed jurisdiction over the case for concluding the assessment proceedings by 30.09.2021. Though the petitioner has submitted its reply to the notice dated 28.09.2021 and indeed sought some more time to file detailed objections/additional information, the respondent No.3 without providing reasonable opportunity to the petitioner has proceeded to pass the impugned assessment order dated 29.09.2021.

9. The arguments of the learned counsel appearing for the petitioner that the objections filed by the petitioner was not considered by the Assessing Officer, appears to have some force. At this juncture, it will be beneficial to refer to the judgment

of the Hon'ble Apex Court in the case of Magadh Sugar & Energy Limited (supra), the principles of law enunciated by the Hon'ble Apex Court is extracted here under:

"19.....

28. The principles of law which emerge are that:

(i) The power under Article 226 of the Constitution to issue writs can be exercised not only for the enforcement of fundamental rights, but for any other purpose as well;

(ii) The High Court has the discretion not to entertain a writ petition. One of the restrictions placed on the power of the High Court is where an effective alternate remedy is available to the aggrieved person;

(iii) Exceptions to the rule of alternate remedy arise where (a) the writ petition has been filed for the enforcement of a fundamental right protected by Part III of the Constitution; (b) there has been a violation of the principles of natural justice; (c) the order or proceedings are wholly without jurisdiction; or (d) the vires of a legislation is challenged;

(iv) An alternate remedy by itself does not divest the High Court of its powers under Article 226 of the Constitution in an appropriate case though ordinarily,

a writ petition should not be entertained when an efficacious alternate remedy is provided by law;"

10. Similarly in the case of Vodafone India Limited (supra), the High Court of Bombay while considering the show cause notice issued to the assessee giving less than 24 hours to respond to the show cause notice observed that the same is a flaw in the decision making process and therefore amenable to judicial review; it has further observed that it has been stated times without number that Justice must not only be done but also appear to have been done, the non-consideration of the petitioner's response to the notice by making it impossible to the petitioner to file its reply for the consideration of the Assessing Officer does cause prejudice to the petitioner leading to palpable injustice; thus, warranting the exercise of writ jurisdiction.

11. Ordinarily alternative remedy if not exhausted by the assessee, a writ petition is not maintainable, but in the exceptional circumstances as

held by the Hon'ble Apex Court in the case of Magadh Sugar & Energy Limited (supra), violation of principles of natural justice certainly warrants interference. This legal principle is followed by the Hon'ble High Court of Bombay in the case of Vodafone India Ltd. (supra). We have no reason to differ from the judgment of Vodafone India Ltd. (supra), since in identical circumstances where a response was sought by the Assessing Officer to the show cause notice, giving less than 24 hours, it has been held to be arbitrary resulting in palpable injustice. Thus, without going into merits or demerits of the case, it would be suffice in restoring the proceedings to the Assessing Officer to provide reasonable opportunity of hearing to the petitioner with liberty to file additional reply, annulling the assessment order.

12. Accordingly, we set aside the assessment order and the demand notices. The proceedings are restored to the file of the Assessing Officer for re-consideration.

The petitioner - assessee is at liberty to file additional reply to the notices issued, along with documents, if any, within a period of four weeks from the date of receipt of the certified copy of the order. The Assessing Officer shall consider the same in accordance with law and conclude the assessment in an expedite manner.

All rights and contentions of the parties are left open.

The Writ Petition stands disposed of in terms of the above.

All pending I.As. stand disposed of accordingly.

Sd/-
JUDGE

Sd/-
JUDGE

KNM/-