

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 28TH DAY OF MAY, 2019

BEFORE

THE HON'BLE MRS.JUSTICE S.SUJATHA

W.P.No.14037/2019 (T - IT)

BETWEEN :

SRI DEEPAK DHANARAJ
S/O LATE CAPT. R.J.DHANRAJ
AGED ABOUT 51 YEARS
R/AT No.563, 8TH MAIN
4TH BLOCK, KORAMANGALA
BANGALORE-560034.

...PETITIONER

(BY SMT VANI.H., ADV.)

AND :

THE INCOME TAX OFFICER
CIRCLE 4[3][1], BMTc BUILDING
80 FEET ROAD, 6TH BLOCK
KORAMANGALA
BENGALURU-560095.

...RESPONDENT

(BY SRI K.V.ARAVIND, ADV.)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO SET ASIDE THE ASSESSMENT ORDER DATED 24.12.2018 FOR THE ASSESSMENT YEAR 2016-17 PASSED UNDER SECTION 143[3] OF THE ACT BY RESPONDENT VIDE ANNEXURE-K AND THE CONSEQUENT DEMAND NOTICE DATED 24.12.2018 ISSUED UNDER SECTION 156 VIDE ANNEXURE-L AND ETC.,

THIS PETITION HAVING BEEN HEARD AND RESERVED ON **26.04.2019**, COMING ON FOR PRONOUNCEMENT OF ORDER THIS DAY, **S.SUJATHA J.**, PASSED THE FOLLOWING:

ORDER

The petitioner has challenged the assessment order dated 24.12.2018 relating to the assessment year 2016-17 passed under Section 143[3] of the Income Tax Act, 1961 ['Act' for short] and the consequent demand notice dated 24.12.2018 issued under Section 156 of the Act, *inter alia* challenging the recovery notice dated 23.02.2019 issued by the respondent to Corporation Bank, Koramangala-PBB, Bengaluru.

2 The petitioner is an assessee borne on the files of the respondent, has been subjected to tax on income. It is submitted by the petitioner-assessee that he has filed a return of income on 30.03.2018 relating to the assessment year 2016-17, offering to tax the capital gains along with other sources of income. The said return is held to be a defective return. It is submitted that the petitioner filed a revised return on 18.09.2018 declaring the long term capital gains and

claiming deduction under Section 48 and exemption under Section 54F of the Act. It is the grievance of the petitioner that the respondent without providing sufficient opportunity of hearing had proceeded to pass the impugned assessment order under Section 143[3] of the Act sans considering the return and the revised return vis-à-vis the claims made towards deduction/exemption under Sections 48 and 54F of the Act.

3. Learned counsel Smt.Vani.H, appearing for the petitioner would contend that the order impugned is arbitrary and cannot be approved for lack of reasons. Non-consideration of the claims made towards deduction/exemption by the petitioner-assessee depicts non-application of mind by the respondent. The rectification application filed by the petitioner also has remained unconsidered. On this ground, it was argued that the alternative remedy of statutory appeal is no bar

to invoke the writ jurisdiction. Reliance was placed on the judgment of the Hon'ble Apex Court in the case of **Assistant Commissioner, Commercial Tax Department, Works Contract and Leasing, Kota V/s. Shukla and Brothers**¹, as well as on the Division Bench Ruling of this Court in **Wipro Limited and Others V/s. The Deputy Commissioner of Income Tax and Others**².

4. Learned counsel appearing for the Revenue would contend that the two lapses committed by the petitioner namely, filing the original return belatedly on 30.03.2018 relating to the assessment in question being not a valid return under Section 139[1] of the Act, the filing of revised return would not arise. Even otherwise, the revised return filed on 18.09.2018 is time barred in terms of Section 139[5] of the Act. Such void return cannot be taken cognizance by the respondent in

¹ [2010] 4 SCC 785

² LAWS[KAR] 2015 3 497

concluding the assessment under Section 143[3] of the Act. Reliance is placed on the judgment of the Hon'ble Apex Court in the case of **Goetze [India] Ltd., V/s. Commissioner of Income Tax**³,

5. I have carefully considered the rival submissions of the learned counsel appearing for the parties and perused the material on record.

6. The sole question that arises for consideration before this Court is whether the assessment order impugned passed under Section 143[3] of the Act is justifiable or warrants interference by this Court?

7. Ordinarily, this Court would have relegated the petitioner-assessee to avail the statutory remedy of appeal available under the Act provided the principles of natural justice are adhered to. As could be seen from the order impugned, the respondent has not whispered

³ LAWS[SC] 2006 3 116

about the revised return filed by the assessee except observing that the returns filed by the assessee were invalidated being defective returns. If that being the position, no opportunity was provided to the petitioner under Section 139[9] of the Act to remove the defects in the returns pointed out by the Assessing Officer nor an opportunity was provided to file a return pursuant to the notice issued under Section 142[1] of the Act. Even assuming that the arguments of the learned counsel for the Revenue that no revised returns could be accepted enlarging the claim of deduction/exemption beyond the time prescribed under the Act, it is sine-qua-non for the Assessing Officer to consider the claims of deduction/exemption made by the petitioner-assessee and thereafter to return the said claims if the assessee is not entitled to the same by assigning the reasons. The impugned assessment order prima-facie establishes that the deduction claimed under Section 54F of the Act is not considered while computing the taxable turnover.

This would certainly indicates the non-application of mind by the respondent.

8. At this juncture, it is desirable to refer to the relevant passages of the Hon'ble Apex Court in the case of **Shukla and Brothers**, supra, and the same are extracted hereunder:

"10. The increasing institution of cases in all Courts in India and its resultant burden upon the Courts has invited attention of all concerned in the justice administration system. Despite heavy quantum of cases in Courts, in our view, it would neither be permissible nor possible to state as a principle of law, that while exercising power of judicial review on administrative action and more particularly judgment of courts in appeal before the higher Court, providing of reasons can never be dispensed with. The doctrine of audi alteram partem has three basic essentials. Firstly, a person against whom an order is required to be passed or whose rights are likely to be affected adversely must be granted an opportunity of being heard. Secondly, the concerned authority should provide a fair and transparent procedure and lastly, the authority concerned must apply its mind and dispose of the matter by a reasoned or speaking order. This has been uniformly applied by courts in India and abroad.

12. In exercise of the power of judicial review, the concept of reasoned orders/actions has been enforced equally by the foreign courts as by the courts in India. The administrative authority and tribunals are obliged to give reasons, absence whereof could render the order liable to judicial chastise. Thus, it will not be far from absolute principle of law that the Courts should record reasons for its conclusions to enable the appellate or higher Courts to exercise their jurisdiction appropriately and in accordance with law. It is the reasoning alone, that can enable a higher or an appellate court to appreciate the controversy in issue in its correct perspective and to hold whether the reasoning recorded by the Court whose order is impugned, is sustainable in law and whether it has adopted the correct legal approach. To sub-serve the purpose of justice delivery system, therefore, it is essential that the Courts should record reasons for its conclusions, whether disposing of the case at admission stage or after regular hearing.

13. At the cost of repetition, we may notice, that this Court has consistently taken the view that recording of reasons is an essential feature of dispensation of justice. A litigant who approaches the Court with any grievance in accordance with law is entitled to know the reasons for grant or rejection of his prayer. Reasons are the soul of orders. Non-recording of reasons could lead to dual infirmities; firstly, it may cause prejudice to the affected party and secondly, more

particularly, hamper the proper administration of justice. These principles are not only applicable to administrative or executive actions, but they apply with equal force and, in fact, with a greater degree of precision to judicial pronouncements. A judgment without reasons causes prejudice to the person against whom it is pronounced, as that litigant is unable to know the ground which weighed with the Court in rejecting his claim and also causes impediments in his taking adequate and appropriate grounds before the higher Court in the event of challenge to that judgment. Now, we may refer to certain judgments of this Court as well as of the High Courts which have taken this view.

14. The principle of natural justice has twin ingredients; firstly, the person who is likely to be adversely affected by the action of the authorities should be given notice to show cause thereof and granted an opportunity of hearing and secondly, the orders so passed by the authorities should give reason for arriving at any conclusion showing proper application of mind. Violation of either of them could in the given facts and circumstances of the case, vitiate the order itself. Such rule being applicable to the administrative authorities certainly requires that the judgment of the Court should meet with this requirement with higher degree of satisfaction. The order of an administrative authority may not provide reasons like a judgment but the order must be supported by the reasons of rationality. The distinction

between passing of an order by an administrative or quasi-judicial authority has practically extinguished and both are required to pass reasoned orders.”

9. Thus, it is clear that recording of “reasons” is sine-qua-non for arriving at a conclusion by the quasi-judicial authority and it is essential to adopt, to subserve the purposes of justice delivery system. The reasons are the soul and heartbeat of the orders without which the order is lifeless and void. Where the reasons are not recorded in the orders it would be difficult for the Courts to ascertain the minds of the authorities while exercising the power of judicial review.

10. It is well settled legal principle that there is no bar to invoke the writ jurisdiction against a palpable illegal order passed by the Assessing Authority in contravention of the principles of audi alteram partem. On this ground alone, the order impugned cannot be approved. There is no cavil with the arguments of the learned counsel for the respondent placing reliance on

the judgment of the Hon'ble Apex Court in **Goetze [India] Ltd.**, supra, that no claim for deduction otherwise than, by filing a revised return can be considered but not in the absence of Assessing Officer analyzing, adjudicating and arriving at a decision by recording the reasons. It is apparent that no reasons are forthcoming for rejecting the revised returns as well as the claims made under Section 54 F of the Act. Such a perfunctory order passed by the assessing officer cannot be held to be justifiable.

11. Hence, for the foregoing reasons, without expressing any opinion on the merits or demerits of the case, the order impugned dated 24.12.2018 at Annexure-K and the consequent demand notice dated 24.12.2018 issued under Section 156 of the Act at Annexure-L as well as the recovery notice dated 22.02.2019 at Annexure-N issued by the respondent are quashed. The proceedings are restored to the file of the

respondent to re-consider the matter and to arrive at a decision after providing an opportunity of hearing to the petitioner, assigning valid reasons as aforementioned.

12. The petitioner shall appear before the respondent-Assessing Officer on 06.06.2019 without expecting any notice. The respondent shall provide an opportunity of hearing and conclude the assessment in an expedite manner preferably within a period of four weeks from the date of appearance of the petitioner, as aforesaid.

All rights and contentions of the parties are left open.

Writ petition stands disposed of in terms of the above.

**Sd/-
JUDGE**

NC.