IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 5TH DAY OF FEBRUARY, 2015

BEFORE

THE HON'BLE MR.JUSTICE B.S.PATIL

W.P.No.39378/2014 (T-IT)

BETWEEN

MR. DEVICHAND KOTHARI (HUF)
S/O.SHA POONAMCHAND GALBAJI,
AGED ABOUT 44 YEARS,
R/AT NO.1,OMKAR VIHAR,
SHARDHANAND BHAWAN ROAD,
V.V PURAM,
BANGALORE-560 004. ... PETITIONER

(BY SRI VINAY V.& SRI.HARISH V S. ADVS.)

AND

INCOME TAX OFFICER
WARD 9 (3), 3RD FLOOR,
JEEVAN SAMPIGE, LIC BUILDING,
SAMPIGE ROAD, MALLESHWARAM,
BANGALORE-560 003. ... RESPONDENT

(BY SRI JEEVAN J. NEERALGI, ADV.)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 & 227 OF THE CONSTITUTION OF INDIA, PRAYING TO QUASH THE IMPUGNED ASSESSMENT ORDER PASSED BY THE RESPONDENT U/S.143(3) R.W SECTION 147 OF THE INCOME TAX ACT, 1961, DATED 30.06.2014 FOR THE ASSESSMENT YEAR 2009-10 I.E., ANNX-C AND CONSEQUENTIAL NOTICE OF DEMAND ISSUED BY THE RESPONDENT, DTD 30.06.2014 FOR THE ASSESSMENT YEAR 2009-10 I.E., ANNX-D.

THIS PETITION COMING ON FOR PRELIMINARY HEARING THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

1. Petitioner is calling in question assessment order dated 30.06.2014 passed by the respondent – Income Tax Officer exercising powers under Section 143(3) read with Section 147 of the Income Tax Act, 1961 (for short, 'the Act'), for the assessment year 2009-10 vide Annexure-C and the consequential demand notice dated 30.06.2014 issued vide Annexure-D.

2. Facts leading to this writ petition briefly stated are, that petitioner submitted his return of income for the assessment year 2009-10 on 23.06.2009 declaring his income at Rs.3,79,200/-. The said return was accepted. Subsequently, notice under Section 148 of the Act was issued on 30.06.2014 for re-opening the assessment. In response, petitioner requested the respondent that the return filed earlier could be treated as return in response to the notice. Thereafter, respondent concluded the assessment on 30.06.2014 by adding a sum of Rs.13,72,380/- which is stated to be the amount pertaining to certain shares purchased by the petitioner out of the income that had allegedly escaped assessment. Accordingly,

tax and interest has been levied by the respondent. It is this order that is challenged in this writ petition.

3. Learned Counsel for the petitioner invites the attention of the court to the representation/application filed by him on 31.01.2014 before the respondent requesting to issue copy of the sworn statement of one Mr. Mukesh Choksi on the basis whereof, proceedings were re-opened. It transpires that a search had been conducted by the income tax authorities at Mumbai on M/s. Mahasagar Securities and Mukesh Choksi Group. At that time, Mr. Mukesh Choksi had admitted to have made accommodation entries in his books to enable the clients to declare speculation profit/loss, shorter gains, etc., and had identified the petitioner herein and certain others as some of the beneficiaries of the fraudulent entries/transactions by giving a sworn statement in that regard and it is based on the said sworn statement of Mukesh Choksi, respondent has re-opened the proceedings. It is in this background, petitioner had made a request to the respondent on 31.01.2014 to provide a copy of the sworn statement, so that petitioner could take further course of action.

4. It is not in dispute that petitioner was not furnished with the copy of the statement said to have been made by Mukesh Choksi. Petitioner was not aware of the contents of the said statement. However, he filed objections contending inter alia that it was not known how a statement made by third party could be made applicable and made basis for the proceedings that were sought to be initiated. He also points out by way of objection that in the absence of specific allegations made against the petitioner in the so-called sworn statement, the same could not have been made basis to pass the assessment order against the petitioner.

5. Despite such objections raised, respondent has proceeded to pass the impugned order holding that an amount of Rs.13,72,380/- which reflected the sale proceeds of shares was required to be brought to tax under the head 'Other Sources of Income'. It is this amount which according to the findings recorded by the respondent was attributed to the petitioner in the so-called sworn statement given by Mukesh Choksi.

6. Thus, it is apparent that without furnishing a copy of the statement stated to have been given by Mukesh Choksi and without notifying the petitioner regarding basis of the

transaction that petitioner is said to have entered into with Mukesh Choksi, respondent has passed the impugned order. The entire basis for the impugned order is the sworn statement of Mukesh Choksi. Unless petitioner is given opportunity to have his say in the mater with regard to the said statement and its contents, it cannot be said that petitioner was given an opportunity of being heard in the matter. Hence, it has to be held that the impugned order is passed without providing any fair and reasonable opportunity of being heard to the petitioner.

7. In fact, learned Counsel for the petitioner places reliance on the judgment of the Division Bench of the Delhi High Court in the case of Mr. Ashok Mittal Vs Assistant Commissioner of Income Tax and another in WP(C) No.1452/2013, wherein also petitioner therein had specifically objected for the assessment proceedings stating that he had no transaction with either Mukesh Choksi or any other related companies, but the Assessing Officer had solely proceeded on the basis of the statement and the list provided without there being any other information or details furnished to the petitioner though petitioner therein had sought for such details. The High Court of Delhi has held that there was absence of fair and reasonable

opportunity and such an assessment order could not be sustained and could be interfered with under Article 226 of the Constitution of India.

8. In the light of the facts and circumstances as adverted to above and as the petitioner has been denied an opportunity of fair hearing by providing copy of the statement and related details regarding the alleged share amount, I am of the view that the matter requires to be re-considered by the respondent by providing fair and reasonable opportunity of hearing to the petitioner and by furnishing the details/copy of the statement based on which the impugned assessment order has been passed.

9. In the result, this writ petition is allowed. The impugned order is quashed. The matter is remitted for fresh consideration in accordance with law and in the light of the observations made above.

Sd/-
JUDGE

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