

Serial No.01
Supplementary List

HIGH COURT OF MEGHALAYA
AT SHILLONG

WP (C) No.72/2019
With MC [WP(C)] No.43/2019
WP (C) No.73/2019
With MC [WP(C)] No.44/2019
WP (C) No.74/2019
With MC [WP(C)] No.45/2019
WP (C) No.75/2019
With MC [WP(C)] No.46/2019

Date of Order: 18.03.2019

M/s North Eastern Electric Power Corporation	Vs.	Principal Commissioner of Income Tax & anr
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Coram:

Hon'ble Mr. Justice Mohammad Yaqoob Mir, Chief Justice
Hon'ble Mr. Justice H.S. Thangkhiew, Judge

Appearance:

For the Petitioner/Appellant(s)	: Mr. VK Jain, Adv with Mr. S Jindal, Adv
For the Respondent(s)	: Ms. N Hawelia, Adv

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| i) Whether approved for reporting in
Law journals etc.: | Yes |
| ii) Whether approved for publication
in press: | No |
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Per Mohammad Yaqoob Mir, 'CJ'

1. Assessment orders for assessment years 2012-13, 2013-14, 2015-16 and 2016-17 all dated 20.02.2019 and four demand orders for respective assessment years all dated 20.02.2019 whereby income of the assessee (petitioner) has been reassessed for the said assessment years passed by the respondent No.2 (Assistant Commissioner of Income Tax (Circle), Shillong) are sought to be quashed.
2. In all the four petitions points for determination are identical therefore, are clubbed and taken up together for consideration.

3. Learned counsel for the respondents would submit that the writ petitions are not maintainable because petitioner has efficacious remedies available under the Income Tax Act, 1961 (hereinafter referred to as the Act) i.e. appeal under Section 246 of the Act before the Deputy Commissioner (Appeals) thereafter appeal before the Appellate Tribunal then against the order of the Tribunal appeal before the High Court in terms of Section 260A of the Act.

4. In opposition learned counsel for the petitioner submits that it is true that the aforesaid remedies are available but availability of such remedies will not deprive the petitioner from invoking extra ordinary jurisdiction of this Court under Article 226 of the Constitution of India when principles of natural justice and the procedures for reassessment have not been followed.

5. In the context of said submission learned counsel for the petitioner highlighted that when Notice under Section 148 of the Act has to be issued, reasons have to be furnished so as to enable the assessee to file objections which objections are required to be considered and disposed of by the Assessing Officer (A.O.) by passing a speaking order until then, A.O. cannot pass the assessment order. In support of his submission has relied on the judgment rendered by the Hon'ble Apex Court in the case of "GKN Driveshafts (India) Ltd. v. Income-tax Officer: [2002] 125 Taxman 963 (SC)".

6. It is his contention that four Notices, for respective four assessment years, under Section 148 of the Act have been issued by the A.O. on 10.01.2019 asking the assessee (petitioner) to deliver, within thirty days from the service of notice, returns in the prescribed form for the said assessment years. The said Notices were received by the petitioner on 16.01.2019. Thirty days would expire on 15.02.2019. Within thirty days i.e. on 13.02.2019, the petitioner vide four separate

communications all dated 13.02.2019 has submitted that original returns already filed may kindly be considered as valid returns for the purpose. The said four returns have been e-filed again on 13.02.2019 further petitioner requested the A.O. to provide reasons for re-opening the assessments under Section 147 of the Act.

7. On 12.02.2019, A.O. had issued four separate show cause notices for respective assessment years to the petitioner regarding failure to comply with the Notices under Section 148 of the Act and asked the petitioner to show cause by 19.02.2019 as to why prosecution proceedings under Section 276CC of the Act be not initiated. Then on 13.02.2019, four more show cause notices were issued by the A.O. asking the petitioner as to why assessments should not be completed under Section 144 in view of petitioner's failure to file returns in response to the Notices under Section 148, thereby disabling the A.O. from fulfilling its statutory obligations in issuing Notices under Sections 143(2) and 142(1) of the Act. In response whereof, petitioner has submitted to the A.O. as under:-

“We have received the notice u/s 148 on 16.01.2019. The Return was to be refilled on or before 15.02.2019 i.e. within 30 days of receipt of the notice. The Assessee was trying to resubmit the Return. However, there was hindrance due to compatibility of Return Utilities available in the system as data could not be imported to the utility files and hence XML files could not be generated. In fact, on our request the representative from the local IT Dept. also came to help us on 12.02.19 but could not find a solution. However, after much research by our whole team, a solution could be found and Return u/s 148 has been uploaded on 13.02.19 successfully. Due to system utility file incompatibility, there was delay. In fact, it is on record that the AO has re-opened the assessment of four years viz., AY 2012-13, AY 2013-14, AY 2015-16 and AY 2016-17 on the same day i.e., 10.01.2019. In view of the above, the show cause notice may kindly be dropped.”

8. A.O. thereafter on 15.02.2019 issued two separate Notices under Section 143(2) of the Act mentioning therein that there are certain points in connection with the returns of income submitted by the petitioner on 13.02.2019 for the assessment years 2012-13 and 2013-14 regarding which some further information is required therefore asked the petitioner to attend the office on 18.02.2019.

9. Regarding other two assessment years AY 2015-16 and AY 2016-17 the returns were processed.

10. On the same date i.e. 15.02.2019, four separate Notices under sub-section (1) of Section 142 of the Act have been issued by the A.O. requiring the petitioner to furnish by or before 18.02.2019, the accounts and documents mentioned therein to which the petitioner responded on 18.02.2019, with a request to allow time up to 04.03.2019 so as to enable the petitioner to collect requisite information which relates to sites located at different remote place, retrieval of the same may take little time, same not appear to have been allowed instead A.O. has passed the assessment and demand orders impugned all dated 20.02.2019. In short, learned counsel for the petitioner would contend that principles of natural justice have been violated as the petitioner has been condemned unheard.

11. Learned counsel for the respondents submits that in fact Notices under Section 148 of the Act were issued on 10.01.2019 and served upon the petitioner on the same day which is quite evident from the copies of the Notices placed on records wherein it is recorded as under:-

“This document is digitally signed and received by the petitioner on 10.01.2019.”

However, hard copy has been sent and received by the petitioner on 16.01.2019. Time period of thirty days will commence

from 10.01.2019 when the notices were actually served upon the petitioner. The petitioner was required to deliver returns in the prescribed form for the said assessment years which the petitioner has not done within time. Though, the petitioner has done so on 13.02.2019 i.e. beyond thirty days time. Therefore, there was no requirement of supplying reasons to the petitioner for re-opening assessments. Petitioner in fact has relinquished the right to get reasons or to file objections, therefore petitioner cannot claim breach of principles of natural justice nor can claim non-adherence to the statutory provisions. That being so, writ petition on such basis is not worth to be entertained, it is for the petitioner to workout alternative remedies i.e. appeals as available.

12. Considered the rival submissions of the parties and also the records.

13. Petitioner is a public sector undertaking registered in the year 1976. A largest power generation company in North Eastern Region (NER) of India stated to be contributing 40% of the total power in NER. The Corporation was incorporated to plan, investigate, design, construct, generate, operate and maintain power stations in NER of India under the Ministry of Power, Government of India.

14. Petitioner-Corporation filed its returns of income for the assessment year 2012-13 before the respondent No.2 on 26.09.2012 under Section 139(1) of the Act. Whereas, for the assessment years 2013-14 on 26.09.2013, for assessment years 2015-16 on 30.09.2015 and for the year 2016-17 on 17.10.2016 declaring therein the income. The returns were duly processed under Section 143(1) of the Act and acknowledged.

15. In the year 2019, Notices under Section 148 of the Act have been issued proposing reassessment of income for the assessment

years 2012-13, 2013-14, 2015-16 and 2016-17. It is quite clear that the petitioner-Corporation has received the said notices which are digitally signed by the petitioner on 10.01.2019. However, hard copies have been received on 16.01.2019. Petitioner-Corporation was required to respond within thirty days from the date of service of notice which is 10.01.2019. Petitioner-Corporation responded to the notice admittedly on 13.02.2019 and communicated to A.O. that original returns already filed are valid. The said returns were e-filed again on the same date i.e. 13.02.2019 and also requested to provide reasons for re-opening of assessments under Section 147 of the Act.

16. Respondent No.2 noticing that the petitioner has not responded to the Notices under Section 148 within thirty days has issued other show cause notices on 12.02.2019 asking the petitioner as to why prosecution proceedings under Section 276CC of the Act should not be initiated in view of failure to comply with the requirements of Notices under Section 148 of the Act. Then on 13.02.2019, A.O. issued four separate show cause notices as to why assessments should not be completed under Section 144 in view of failure to file returns in response to the Notices under Section 148, thereby disabling him (A.O.) from fulfilling its statutory obligations in issuing Notices under Sections 143(2) and 142(1) of the Act which too were responded by the petitioner.

17. A.O. on 15.02.2019 has issued Notices under Section 143(2) of the Act which reveal that returns of the petitioner i.e. responses of the petitioner submitted on 13.02.2019 in response to the Notices under Section 148 have been taken note of and the petitioner was asked to verify certain points and for the purpose, petitioner had to appear before the A.O. on 18.02.2019. Furthermore, Notices under sub-section (1) of Section 142 of the Act were also issued on

15.02.2019 for furnishing certain documents which in fact would mean that period of thirty days reckoning from 10.01.2019, in effect, has been extended by entertaining the response of the petitioner to the Notices under Section 148 dated 10.01.2019. Once it has been done and Notices under Sections 143(2) and 142(1) of the Act have been issued, it was the statutory duty of A.O. to furnish reasons for re-opening the assessments under Section 147 of the Act to the petitioner which the petitioner had specifically requested while responding to the Notices under Section 148 on 13.02.2019.

18. Admittedly reasons for re-opening of assessments have not be furnished to the petitioner. Object of furnishing reasons was to enable the petitioner to file objections regarding re-opening and then on filing of objections, the petitioner had the right of hearing before the A.O. Then, A.O. after considering the objections and after hearing the petitioner was to deal with the objections by passing a speaking order, same has not been done. In addition thereto, the petitioner while responding to the Notices under Sections 143(2) and 142(1) of the Act had requested for extending time for production of requisite documents up to 04.03.2019 for the reasons as detailed therein same too has been ignored. While ignoring, to follow statutory requirements, filing objections and hearing, impugned assessment and demand orders have been passed which in turn would suggest that the respondent has not only breached the principles of natural justice but also breached the procedure which was required to be followed for decision (reassessment).

19. In the aforesaid view, we are fortified by the judgment rendered by the Hon'ble Apex Court in the case of GKN Driveshafts (India) Ltd. v. Income-tax Officer: [2002] 125 Taxman 963 (SC) wherein it has been held as under:-

“We see no justifiable reason to interfere with the order under challenge. However, we clarify that when a notice under section 148 of the Income Tax Act is issued, the proper course of action for the noticee is to file return and if he so desires, to seek reasons for issuing notices. The Assessing Officer is bound to furnish reasons within a reasonable time. On receipt of reasons, the noticee is entitled to file objections to issuance of notice and the Assessing Officer is bound to dispose of the same by passing a speaking order. In the instant case, as the reasons have been disclosed in these proceedings, the Assessing Officer has to dispose of the objections, if filed, by passing a speaking order, before proceeding with the assessment in respect of the abovesaid five assessment years.”

20. It is also relevant to quote paras 11 and 12 of the judgment rendered in the case of “Commissioner of Income Tax and others v. Chhabil Dass Agarwal: (2014) 1 SCC 603 as under:-

“11. Before discussing the fact proposition, we would notice the principle of law as laid down by this Court. It is settled law that non-entertainment of petitions under writ jurisdiction by the High Court when an efficacious alternative remedy is available is a rule of self-imposed limitation. It is essentially a rule of policy, convenience and discretion rather than a rule of law. Undoubtedly, it is within the discretion of the High Court to grant relief under Article 226 despite the existence of an alternative remedy. However, the High Court must not interfere if there is an adequate efficacious alternative remedy available to the petitioner and he has approached the High Court without availing the same unless he has made out an exceptional case warranting such interference or there exist sufficient grounds to invoke the extraordinary jurisdiction under Article 226. (See *State of U.P. v. Mohd. Nooh*²: AIR 1958 SC 86; *Titaghur Paper Mills Co. Ltd. v. State of Orissa*³: (1983) 2 SCC 433; (1983) SCC (Tax) 131; *Harbanslal Sahnia v. Indian Oil Corpn. Ltd.*⁴: (2003) 2 SCC 107; *State of H.P. v. Gujarat Ambuja Cement Ltd.*⁵: (2005) 6 SCC 499).

12. The Constitution Benches of this Court in *K.S. Rashid and Sons v. Income Tax Investigation Commission*⁶: AIR 1954 SC 207, *Sangram Singh v. Election Tribunal*⁷: AIR 1955 SC 425, *Union of India vs. T.R. Varma*⁸: AIR 1957 SC

882, *State of U.P. vs. Mohd. Nooh*²: AIR 1958 SC 86 and *K.S. Venkataraman and Co. (P) Ltd. vs. State of Madras*⁹: AIR 1966 SC 1089 have held that though Article 226 confers very wide powers in the matter of issuing writs on the High Court, the remedy of writ absolutely discretionary in character. If the High Court is satisfied that the aggrieved party can have an adequate or suitable relief elsewhere, it can refuse to exercise its jurisdiction. **The Court, in extraordinary circumstances, may exercise the power if it comes to the conclusion that there has been a breach of principles of natural justice or procedure required for decision has not been adopted.** [See *N.T. Veluswami Thevar v. G. Raja Nainar*¹⁰: AIR 1959 SC 422, *Municipal Council, Khurai v. Kamal Kumar*¹¹: AIR 1965 SC 1321: (1965) 2 SCR 653, *Siliguri Municipality v. Amalendu Das*¹²: (1984) 2 SCC 436: (1984) SCC (Tax) 133, *S.T. Muthusami v. K. Natarajan*¹³: (1988) 1 SCC 572, *Rajasthan SRTC v. Krishna Kant*¹⁴: (1995) 5 SCC 75: 1995 SCC (L&S) 1207: (1995) 31 ATC 110, *Kerala SEB v. Kurien E. Kalathil*¹⁵: (2000) 6 SCC 293, *A. Venkatasubbiah Naidu v. S. Chellappan*¹⁶: (2000) 7 SCC 695, *L.L. Sudhakar Reddy v. State of A.P.*¹⁷: (2001) 6 SCC 634, *Shri Sant Sadguru Janardan Swami (Moingiri Maharaj) Sahakari Dugdha Utpadak Sanstha v. State of Maharashtra*¹⁸: (2001) 8 SCC 509, *Pratap Singh v. State of Haryana*¹⁹: (2002) 7 SCC 484: 2002 SCC (L&S) 1075 and *GKN Driveshafts (India) Ltd. vs. ITO*²⁰: (2003) 1 SCC 72]. (Emphasis added)

21. For the stated reasons and the law, we are satisfied that there has been a breach of principles of natural justice and also the procedure, required to be adopted for passing assessment orders on reassessment and demand orders, have not been followed. Therefore, an exceptional case for invoking power under Article 226 of the Constitution of India. Both the orders being unsustainable, to ask the petitioner to avail remedies of appeal, matter will unnecessarily get protracted.

22. It is advantageous to quote para 8 of the judgment rendered by the Bombay High Court in the case captioned “Commissioner of Income-tax – 24 v. Trend Electronics” reported in [2015] 61 taxman.com 308 (Bombay) as under:-

“8. We find that the impugned order merely applies the decision of the Apex Court in *GNK Driveshafts (India) Ltd. (supra)*. Further it also follows the decision of this Court in *Videsh Sanchanr Nigam Ltd. (supra)* in holding that an order passed in reassessment proceedings are bad in law in the absence of reasons recorded for issuing reopening notice under Section 148 of the Act being furnished to the assessee when sought for it. It is axiomatic that power to reopen a completed assessment under the Act is an exceptional power and whenever revenue seeks to exercise such power, they must strictly comply with the prerequisite conditions viz. Reopening of reasons to indicate that the Assessing Officer had reason to believe that income chargeable to tax has escaped assessment which would warrant the reopening of an assessment. These recorded reasons as laid down by the Apex Court must be furnished to the assessee when sought for so as to enable the assessee to object the same before the Assessing Officer. Thus in the absence of reasons being furnished, when sought for would make an order passed on reassessment bad in law. The recording of reasons (which has been done in this case) and furnishing of the same has to be strictly complied with as it is a jurisdictional issue. This requirement is very salutary as it not only ensures reopening notices are not lightly issued. Besides in case the same have been issued on some misunderstanding/misconception, the assessee is given an opportunity to point out that the reasons to believe as recorded in the reasons do not warrant reopening before the reassessment proceedings are commenced. The Assessing Officer disposes of these objections and if satisfied with the objections, then the impugned reopening notice under Section 148 of the Act is dropped/withdrawn otherwise it is proceeded with further. In issues as such as this, i.e. where jurisdictional issue is involved the same must be strictly complied with by the authority concerned and no question of knowledge being attributed on the basis of implication can arise. We also do not appreciate the stand of the revenue, that the respondent-assessee had asked for reasons recorded only once and therefore seeking to justify non-furnishing of reasons. We expect the state to act more responsibly.”

23. While holding petitions maintainable, we allow the same and set aside all the impugned assessment and demand orders dated 20.02.2019. A.O. shall furnish reasons for re-opening of assessment of

income for the said assessment years so as to enable the petitioner to file objections and after hearing the petitioner, to pass speaking orders then to proceed with the assessment and to pass appropriate orders as shall be warranted.

24. Petitions succeed shall stand disposed of as above along with connected MCs.

25. Copy be sent to respondent No.2 for information.

26. No order as to costs.

(H.S. Thangkhiew)
Judge

(Mohammad Yaqoob Mir)
Chief Justice

Meghalaya
18.03.2019
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