

W.P.(MD).No.23385 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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RESERVED ON : 26.09.2023

PRONOUNCED ON: 12.12.2023

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD).No.23385 of 2022

and

W.M.P.(MD)No.17465 of 2022

C.Chellamuthu

...Petitioner

.Vs.

1.The Principal Commissioner,
National Faceless Assessment Centre,
North Block,
New Delhi-110 001.
New Delhi.

2.The Principal Commissioner of
Income Tax II,
Income Tax Office,
Madurai.

3.The Deputy Commissioner of
Income Tax,
Income Tax Office,
Dindigul.



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4. The Assessment Unit,
Income Tax Department,
Ministry of Finance,
National Faceless Assessment Centre,
North Block,
New Delhi-110 001.

...Respondents

PRAYER: This Writ Petition is filed for Writ of Certiorari, to call for the records relating to the proceedings of the respondent dated 26.09.2022 corresponding to PAN No. AIUPC8927E, for the assessment year 2020-2021 and quash the same.

For Petitioner : Mr.R.Murali,
for Mr.B.Ponnu Pandi

For Respondents : Mr.N.Dilip Kumar
Senior Standing Counsel

ORDER

This Writ Petition is filed for Writ of Certiorari, to quash the assessment proceedings dated 26.09.2022, for the assessment year 2020 to 2021.

2. The brief facts are that the petitioner is an agriculturist and grower of Gloriosa Superba Species. In native language, it is called as Karthigai Flower.



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The seeds of the plant are high value in the international market. The seeds contained Alkaloid and has been used as a traditional medicine in many cultures. It has been used in the treatment of gout, infertility, open wounds, snakebite, ulcers, arthritis, cholera, colic, kidney problems, typhus, itching, leprosy, bruises, sprains, haemorrhoids, cancer, impotence, nocturnal emission, smallpox, sexually transmitted diseases, and many types of internal parasites. It is an anthelmintic. It has been used as a laxative and an alexiteric. The sap is used to treat acne and head lice. In parts of India, extracts of the rhizome are applied topically during childbirth to reduce labour pain. The petitioner is interested in the agriculture and adopting an innovative way to conduct the agriculture in a profit manner. Considering the petitioner's interest and contribution towards the plantation of medicinal plants, he was given award by the National Medicinal Plants Board, Rajasthan during August 2016. Even though the flower is the national flower of Zimbabwe, it is widely seen in various countries including in Sri Lanka. In fact, it was selected as the National Flower by the Tamil Ellam Groups. In and around Dindigul, Tirupur, Coimbatore, Erode and Karur area, the above flower is cultivated. The nature of soil and as well as limited rain is suitable for cultivation of the above crops. The petitioner is involving in the plantation of Gloriosa Superba Species for the past 25 years. Due to its medicinal value, the seeds of the plant are exported and thereby depending upon the international market value, the seeds are purchased



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by the local agents. Even though the local agent are willing to pay the amount by way of cash to avoid accounting, being a lawful citizen, the petitioner had insisted to get the income through proper bank transactions. The respondent department accepted the said income as an agriculture income for similar persons. In fact for the financial year 2017-2018, the petitioner's agriculture income to the tune of Rs.3,14,81,092/- (Rupees Three Crores Fourteen Lakhs Eighty One Thousand and Ninety Two only) was accepted by the respondent revenue based on the explanations in respect of the same plantation. The petitioner is having more than 50 acres of lands and also got lands through lease from the various land owners to the extent of 90 acres and the petitioner is having certificates issued by the Village Administrative Officer including Tahsildar to the effect that the petitioner is cultivating the above extent of land with the Gloriosa Superba Species. The Village Administrative Officers always issued certificates in Tamil language only. But the respondent department always insisted such certificates or documents are to be in either in English or Hindi. Even though the petitioner produced the same, the respondent failed to accept it due to language issue. For the financial year 2019-2020, the petitioner had sold 49,551.54 Kg of Gloriosa Superba Seeds which the petitioner had shown as income in the assessment year 2020-2021.



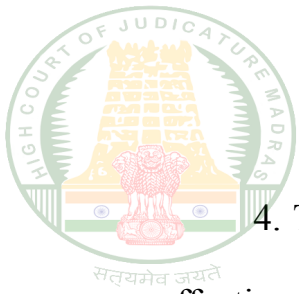
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3. The petitioner further submitted that the harvest made during March 2019 was sold after April 2019. Similarly, the harvest made during February 2020 was sold immediately and thereby in the financial year 2019-2020, the petitioner had sold crops of two seasons in between 02.04.2019 to 20.03.2020. In view of the same, the sales have shown huge quantity. In the agriculture business, it is well known fact that the agriculturist stock their product and sell the subject to good rate. In this case also the petitioner has followed the same. The respondent has issued show cause notice dated 20.09.2022 under Section 143(2) of the Income Tax Act, 1961 with a direction to submit the reply on or before 6.00 P.M. of 22.09.2022, which was intimated through SMS at about 08.15 P.M. on 20.09.2022. Thereby giving time only for 18 hours. Since the notice contains more than 30 pages, the petitioner request the concerned officer to provide 3 days adjournment for filing detail reply. The said request was submitted through online portal on 21.09.2022. But the 4th respondent issued final notice dated 22.09.2022 under Section 142(1) of the Income Tax Act, 1961 with a direction to produce documents and explanations on or before 6.00 P.M. on 22.09.2022. In response to the same, the petitioner submitted the explanation dated 22.09.2022 before the cut-off time. The petitioner had also enclosed the documents in support of the claim. In fact, in the notice dated 22.09.2022, the total assessed income was arrived as Rs.8,73,83,310/- (Rupees Eight Crores Seventy Three Lakhs Eighty Three Thousand Three Hundred and Ten only) and



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agricultural income was arrived as Rs.25,16,750/- (Rupees Twenty Five Lakhs Sixteen Thousand Seven Hundred and Fifty only). The petitioner had submitted explanation within time. Admittedly for all the previous notices the petitioner had submitted explanation through his Auditor. The petitioner being an agriculturist residing in a village and received belated SMS. Hence in respect of online portal notices he had submitted his explanations through his Auditor. On the other hand, the respondent had taken a stand that as if the petitioner has not given proper response to the notices which is contrary to true facts. Further the petitioner sought video conference hearing on 22.09.2022 with valid reasons, which request is available in the portal of the respondent department. Without considering the said request, the respondent passed the present impugned order dated 26.09.2022 by invoking under Section 143(3) read with 144(b) of the Income Tax Act, 1971. In the present order the respondent also proceeding with penalty proceedings under Section 271 AAC (1) of the Income Tax Act. Admittedly the petitioner's request for personal hearing through video conference was not at all considered which is vital opportunity. Denial of said opportunity amount to violation of principles of natural justice. Hence, the petitioner is before this Court.



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4. The respondents have filed a counter stating that the petitioner has an effective, alternative statutory appellate remedy to file statutory appeal before the Commission. The petitioner's case was selected for limited scrutiny under CASS to verify the large agricultural income claimed by the assessee during the relevant assessment year. Notice under section 143(2) was issued on 29.06.2021. Thereafter notices under section 142(1) were issued on 27.10.2021, 10.11.2021, 06.12.2021, 30.12.2021, 06.01.2022, 09.02.2022, 18.02.2022, 05.06.2022 and 07.09.2022 to furnish complete details along with supporting evidence in respect of the above issues. Finally, show cause notice was issued on 22.09.2022 and the assessment was completed on 26.09.2022. From the date of issue of notice under section 143(2), the assessee was given nearly 12 months for submission of details. Hence, there is no breach of principles of natural justice. It is further submitted that the assessee has not requested for video conference hearing. The claim of the assessee is that the agricultural income was allowed in the assessment year 2018-2019 and hence it should be allowed for the assessment year 2020-2021 is not acceptable. Further the assessee has not brought out that the issue of examination in the assessment year 2018-2019 and the assessment year 2020-2021 were same. The assessee was given various opportunities to prove that the amount declared by him is from sale of Gloriosa Superba Seeds actually grown and cultivated by him. The assessee has failed to prove that exempt income has been earned from agricultural activities. The

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findings confronted to assessee were never dispelled by the assessee by placing contra evidence. The assessee did not produce any documentary evidence to prove the same and hence the amount is credited to the books of account of Rs. 8,73,00,300/- (Rupees Eight Crores Seventy Three Lakhs and Three Hundred only) has to be necessarily added as income from other source under section 68 of the Income Tax Act. The further contention of the petitioner is that the respondent has prepared and issued show cause notice as well as passed the final order. The SOP mandates issuance of show cause notice containing the details of proposed additions and disallowances. The respondent had rightly issued show cause notice, the contents of the proposals which will form the basis of the final order. Therefore, there is no violative of principles of natural justice. The assessee claims that he was given only two days time, the proceedings were open upto 26.09.2022, during which the assessee ought to have responded. In effect there was a time period of seven days from and inclusive of 20.09.2022 to 26.09.2022. The respondents further stated that in the assessment order dated 26.09.2022 under the heading 'Inappropriate Land Holding' had dealt in detail about the land holdings of the assessee but the assessee had failed to note this. The respondent is the one who prepared and issued the notice dated 20.09.2022 as well as the final order dated 26.09.2022 and the explanation submitted by the petitioner dated 22.09.2022 was very much considered by the respondent in the final order. This is evident in sub-para



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6 of para XII in which the assessee's submission in reply dated 22.09.2022 were reproduced. Further the assessee himself admitted that the explanation dated 22.09.2022 was cut and paste in the final impugned order, from this it is evident that the case of the petitioner was considered by the respondent. The petitioner was granted opportunity to prove that the amount declared by him is from sale of Gloriosa Superba Seeds actually grown and cultivated by him, but the assessee failed to prove that the exempted income has been earned from agricultural activities, the petitioner failed to dispel by placing contra evidence. Further, the assessing officer had very much considered the verification statement, purchasers namely agencies who purchased seeds from the petitioner clearly stated that for the purchase of agricultural products advance amount. The case was referred to the verification unit. As per report from verification unit (UV), the buyer has given advance to the farmers but the assessee has booked as sale on the same date. Therefore, the VU report and assessee's statement is contradictory. Hence, the assessment order is passed as per law and prayed to dismiss the Writ Petition.

5. The petitioner has filed an additional affidavit wherein it is stated that the petitioner has started growth from September and October in the year 2018, the seeds are harvested during January to March 2019 and same was sold from



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April 2019. The next year also, the plants started growth from September and October 2019 the seeds are harvested during January to March 2020 and the maximum quantity of the harvested seeds was sold before March 2020. Since at the relevant point of time market price was getting down and therefore the petitioner has sold the seeds immediately after cultivation. In view of the same two years products are sold during April 2019 to March 2020 and thereby the petitioner's turnover is considerably increased during the said period. Moreover, the price of agricultural products is depending upon various factors including demand in the market. The certificate issued by the Village Administrative Officer for the relevant period will prove the same. During the above said period the petitioner undertook cultivation to an extent of 150 acres (2018 to 2019-85 acres, 2019 to 2020-65 acres). Moreover, by using scientific methods namely drip irrigation, proper and timely usage of fertilizers, pollination and by hard work, the petitioner successfully undertaking cultivation. During the relevant period, the petitioner has purchased fertilizers and other products through bank transactions for which the petitioner is having receipts issued by buyers/agents to prove sale of agricultural products. Moreover, the petitioner had sought of personal hearing through online portal, the request was not considered. The petitioner further submitted that the respondent made verification of accounts of the fertilizers and accepted the accounts related the sales made by the petitioner. The respondent also made verification with the

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buyers/ agents account details through whom the petitioner had sold the products and received cash through bank. The respondent undertook such spot inspection to collect and verify the details and if the respondent department would conduct spot inspection in the petitioner agricultural field to note down the presence of plants and godown and thereby arrive a proper decision regarding the petitioner's claim of sale of agricultural products during the relevant assessment year. Therefore, the respondent may inspect the revenue officers to verify the revenue records regarding the cultivation. The petitioner is also having revenue records as well as documents for own land and the lease deeds and the adangal for the relevant year will prove the cultivation. The adangal issued by the Village Administrative Officer includes the details of the wells, bore wells, E.B. Connections and godowns. The petitioner further submitted that he has paid the bill amounts of fertilizers through bank transaction and received all the amounts of sold products (Gloriyosa Superba Seeds) through bank transaction from the buyers. From all these, it would be evident that the petitioner has sold agricultural products for two periods in the same year. Hence, there is high income from agricultural activities which is exempted from tax. Hence, the petitioner prayed to allow the writ petition.



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6. Mr.R.Murali, for Mr.B.Ponnu Pandi, the learned Counsel appearing for the petitioner, Mr.N.Dilip Kumar, the learned Senior Standing Counsel appearing for the respondents and perused the materials available on record.

7. The first contention of the respondent is that the petitioner is having an effective, alternative remedy against the impugned assessment order. The statutory appellate remedy lies before the appellate authority namely the Commissioner of Income Tax (Appeals). The respondent relied on various judgments and one such judgment is Whirlpool Corporation Ltd., Vs. Registrar of Trademarks reported in 1998 (8) SCC 1, has clarified that the Writ Petition under Article 226 of can be entertained, if there is violation of any fundamental rights, violation of the principle of natural justice and in case of the proceedings being without jurisdiction. In the present case, the respondents have issued notice under Section 143(2) on 29.06.2021. Thereafter eight notices were issued to the petitioner on various dates. Since the petitioner has not responded properly by giving details, the same cannot be considered as violation of principles of natural justice. The respondents further submitted the petitioner has not sought for video conference hearing and relied on the submission of the petitioner dated 22.09.2022. But the learned Counsel appearing for the



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petitioner brought to the knowledge of this Court that the petitioner has sought for video conference hearing through E-mail. The said E-mail communication is extracted hereunder:

Reason for seeking VC/ adjournment

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Reason for Video Conferencing
Oral evidence

Reason
sir, in connection with my scrutiny proceedings for the AY 2020-21 there is involvement of high pitch addition. It is necessary for the video conference hearing. Hence I pray kindly take necessary arrangements for video conferencing and render natural justice.

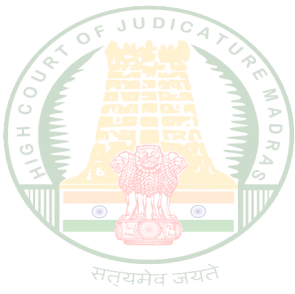
Attachments



REPLY 22092022 -2.pdf

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In the said Email communication is clearly mentioned that since it is high pitch assessment the petitioner has sought video conference hearing. Therefore this Court is of the considered opinion that it is clearly violation of principles of natural justice. In view of the same, the impugned order is liable to be quashed.

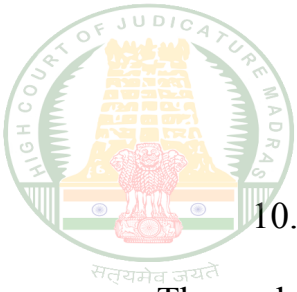


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8. The next contention of the petitioner is that the petitioner had submitted Village Administrative Officer's certificate wherein it is mentioned the petitioner is the owner to some of the lands and the petitioner is having lease rights to some of the lands. However the Village Administrative Officer had issued the certificate in Tamil but the respondent is insisting to submit documents either in English or Hindi. It is the practice in the State of Tamil Nadu that the VAO would to issue certificate in Tamil. If need by the respondent may direct the petitioner to submit translation copy.

9. For the reasons stated supra the impugned assessment order is quashed. The respondents are directed to grant video conference hearing to the petitioner. The petitioner shall submit the certificates issued by the Village Administrative Officer and also submit the translation copy. The said assessment shall be completed within a period of eight weeks (8) from the date of receipt of a copy of this order.



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10. With these observations and directions, this Writ Petition is allowed.

There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

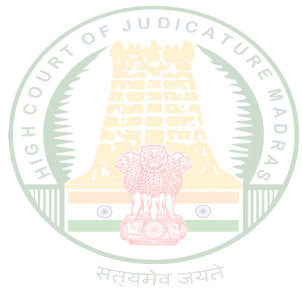
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NCC : Yes/No

Index : Yes / No

Internet : Yes/ No

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