

W.P.(MD)No.2078 of 2020

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

<i>Judgment Reserved On</i>	<i>Judgment Pronounced On</i>
31.07.2024	19.11.2024

CORAM

THE HONOURABLE MRS.JUSTICE **S.SRIMATHY**

W.P.(MD)No. 2078 of 2020
and
W.M.P.(MD)No. 1742 of 2020

S.M.I.L.E Microfinance Limited,
No.14/25, Chakrapani Street,
West Mambalam, Chennai – 600 033.
Represented by its Managing Director & CEO,
P.Murali Srinivas

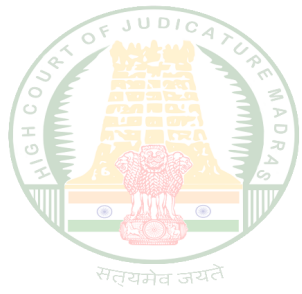
... Petitioner

Vs.

The Assistant Commissioner of Income Tax,
Central Circle-1, Madurai.
Ground Floor, Income Tax Valuation Wing,
Additional Office Building,
Kulamangalam Main Road,
Meenambalpuram,
Madurai – 625 002.

... Respondent

PRAYER : Writ Petition filed under Article 226 of the Constitution of India for issuance of **Writ of Certiorari**, to call for the records pertaining to the Order



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under Section 143(3) dated 31.12.2019 in DIN & Order No. ITBA/AST/S/143(3)/2019-20/1023518359 passed by the respondent for Assessment Year 2017-2018 and quash the same.

For Petitioner : Mr.P.S.Raman, Senior Counsel,
M/s.Raman & Associates

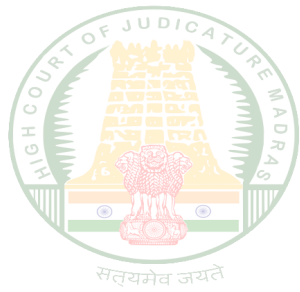
For Respondent : Mr.N.Dilip Kumar
Standing Counsel

ORDER

This writ is filed to quash the impugned order dated 31.12.2019 passed under Section 143(3) in DIN & Order No.ITBA/AST/S/143(3)/2019-20/1023518359 for Assessment Year 2017-2018.

2. Heard Mr.P.S.Raman, M/s.Raman & Associates, the Learned Senior Counsel appearing for the petitioner and Mr.N.Dilip Kumar, the Learned Standing Counsel appearing for the respondent and perused the material documents available on record.

3. The brief facts as stated in the affidavit is that the writ petitioner company is non-deposit taking Non-Banking Financial Company (NBFC) having license from the Reserve Bank of India (RBI) for functioning as a Micro Finance

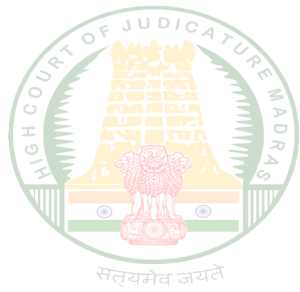


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Institution (MFI) registered with RBI in Registration Number: B-07.00537. Being a NBFC-MFI entity, the loans were mostly made to individual members from 'Women Joint Liability Groups' for small ticket size ranging from Rs.10,000 to Rs.50,000 with fortnightly repayments, which is transacted in small cash denominations. There are about three lakh women borrowers taking loans from the entity in 100 branches.

4. During the demonetization period (i.e. between 08.11.2016 to 31.12.2016) the petitioner deposited the cash available with it and the cash collections of repayment from borrowers in the bank accounts of the petitioner company during the window made available for cash deposits in the bank account. On 28.03.2017 the petitioner filed an online response in the "Cash Transaction-2016" module in the filing portal of the Income Tax Department stating that "the cash deposited out of cash balance available as per cash book and loan amount repayment received from borrowers in cash". Thereafter, the petitioner filed return of income in time under section 139(1) of the Income Tax Act, 1961 (hereinafter referred to as IT Act) for Assessment Year 2017-2018 on 20.09.2017 admitting a total income of Rs. 16,07,57,770/-. Then had filed

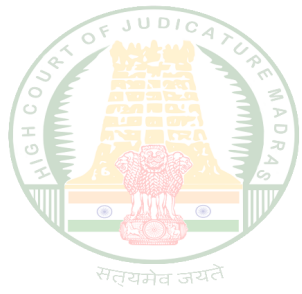


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revised return under section 139(4) of IT Act on 22.05.2018 admitting the same total income to Rs. 16,07,57,770/-, but rectified and disclosed the details of all the bank accounts which were inadvertently omitted in the original return. The petitioner's case was selected for scrutiny and notice u/s 143(2) dated 08.08.2018 was issued. Pending this notice, the authorities had issued another notice dated 27.09.2019 u/s.143(2) of IT Act in respect of revised return wherein it is stated cash deposit (demonetization) is the issue identified for examination.

5. In the meanwhile, notice u/s. 142(1) dated 09.08.2019 was issued calling for various details and personal hearing was granted on 19.08.2019 and 28.08.2019 where the scrutiny assessment was conducted. Another personal hearing was granted on 12.10.2019, wherein the petitioner filed various details stated in the e-proceeding menu in the petitioner's account in the e-filing portal of the IT Department on various dates from 31.10.2019 till 13.12.2019. Thereafter, the Tax Officer has not given any opportunity of being heard. The respondent issued notice u/s 133(6) to some borrowers in Chennai and Madurai region and the result of such enquiries was not brought on record in the assessment order. Without any further intimation or show cause notice, the respondent completed

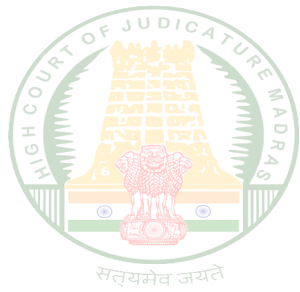


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the impugned assessment order dated 31.12.2019 u/s 143(3) by adding Rs. 99,50,749/- u/s 68 of the Income Tax Act, 1961 and determined the total income as Rs.17,07,08,519/-. In the said order the respondent had stated about information u/s. 133(6) that was collected by the respondent from the bankers of the petitioner, but this information was never put to the petitioner, hence the same is violative of principles of natural justice and also violation of Section 142(3). In the assessment order dated 31.12.2019, the respondent noted that the petitioner deposited specified bank notes to the tune of Rs.1,18,57,000/- in various bank accounts belongs to petitioner and had granted allowance for Rs. 19,06,251/- as cash balance as per petitioner's cash book as on 08.11.2016 but had treated the balance of Rs.99,50,749/- as unexplained cash credit u/s.65 of the Act. Thereby the respondent charged a rate of 60% as per Section 115BBE of the Act on the addition of Rs.99,50,749/- and raised a demand of Rs. 1,30,50,323/- including interest u/s 2348 and 234C of the Income Tax Act, 1961.

6. The amendment to Income Tax Act prescribing the rate of 60% as per Section 115(BBE) of the Act was assented to by the President only on 15.12.2016 and the same cannot be applied retrospectively for transactions prior

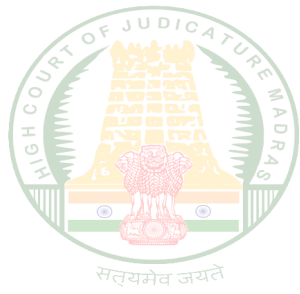


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to 15.12.2016. Further, the respondent did not bring on record dates on which specified bank notes were deposited in the bank accounts of the petitioner which is essential for determining applicability of rate as per the amended section. Infact the assessment was completed based solely on a reply given in the "Cash Transactions-2016" module that was given even before filing the return of income. Hence the writ petition challenging the assessment order.

7. The defendant had filed counter denying all allegations except that are specifically admitted. Then stated that the factual details necessary for the case are that the petitioner/assessee is a company, engaged in the business of lending loan to individuals. The assessee filed original return of income for the assessment year 2017-18 on 20.09.2017 admitting a total income of Rs. 16,07,57,770/- and it was revised on 22.5.2018 incorporating the details of bank accounts. The original return was selected for scrutiny through CASS and notice u/S.143(2) dated 8.8.2018 was issued and the revised return of income filed on 22.5.2018 was also selected for scrutiny through CASS and notice u/s. 143(2) dated 27.09.2019. The assessment for the assessment year 2017-18 was selected for scrutiny through CASS for the reason to verify the source for cash deposits

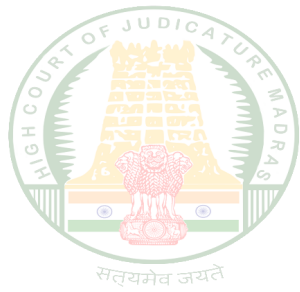


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made during demonetization period. In the revised return the assessee stated that during demonetization period a sum of Rs.44,39,33,123/- was deposited in various bank accounts by cash. Out of which, Rs.1,18,57,000/- deposited as Specified Bank Notes in 500 & 1000 notes (SBN Notes) as per information collected from banks. Cash balance as on 08.12.2016 as per cash book was Rs. 19,06,251/-. The difference between the amount of deposit made in bank account by SBN Notes amounting to Rs.1,18,57,000/- and cash balance of Rs.19,06,251/- as on 8.12.2016, amounting to Rs.99,50,749/- was treated as unexplained cash credits in the impugned assessment order since the petitioner is not permitted to receive SBN Notes during the period from 8.11.2016 to 30.12.2016 as per Government Notification No.2653 dated 8.11.2016. The transactions made in the bank accounts of petitioner including the details of cash deposit made by SBN notes are very much available with the petitioner but the same was not provided by the petitioner.

8. In the writ petition the petitioner did not dispute the quantum of deposit made in bank account by SBN Notes. But their contention is no opportunity and violation of principles of natural justice. The said contention is

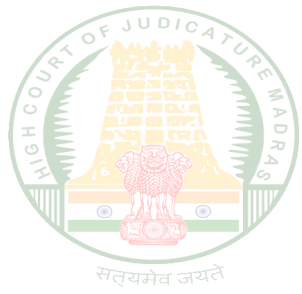


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incorrect several opportunities was granted to the petitioner and there is no violation of the principles of natural justice. In case, it is disputed the addition made in the assessment, then appeal lies before Commissioner of Income Tax (Appeals) and the petitioner without exhausting the effective alternative remedy and bypassing the same had filed the writ petition and hence the writ petition is not maintainable in law as held by the Hon'ble Supreme Court in the case of CIT Vs. Chhabil Das Agarwal reported in 357 ITR 357 and also held by this Hon'ble Court in the case of Kone Elevator India (P) Ltd Vs. ACIT reported as 35 taxmann.com 102. In a recent judgment in Ganpact India (P) Ltd, Vs. DCIT reported in (2019) 416 ITR 440 the Hon'ble Supreme Court has reiterated that writ petition ought not to be entertained when effective statutory appellate remedy was available to the petitioner.

9. Without prejudice to the above contention of statutory appellate remedy, the respondent denied the other contention of the petitioner as false and incorrect. In so far as the contention in paragraph 4 of the affidavit that during demonetization it had deposited the cash balance as on 8.11.2016 and the cash collections of repayment from borrowers in the bank accounts maintained by the

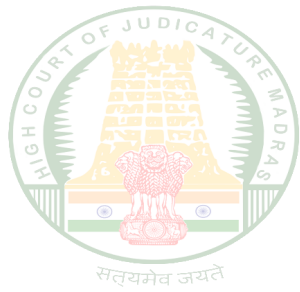


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petitioner during the window period (i.e. from 8.11.2016 to 31.12.2016), the respondent submitted that the available cash balance with the petitioner as per the cash book is Rs. 19,06,251/-, whereas the total amount **deposited from 8.11.2016 to 31.12.2016 is Rs.44,39,33,123/- in the form of both Specified and Non-Specified Bank notes**. The specified Bank notes are erstwhile Rs.500 and Rs.1000/- denomination notes. The amount deposited as Specified Bank Notes is Rs.1,18,57,000/-. The acceptance of specified notes is expressly banned by all, except for the persons notified in the Govt. Gazette. This fact is mentioned in the Assessment order.

10. The petitioner has further stated that it had filed online response in the "Cash Transactions-2016" module of the Income Tax Department. The petitioner's act is not voluntary as it was mandatory to file on-line response for the persons whoever deposit cash more than Rs.2,50,000/- in the Specified Bank Notes during the period 8.11.2016 to 31.12.2016. The case was selected for scrutiny through Computer Assisted scrutiny selection (CASS) and notice was issued by Assistant Commissioner of Income Tax (NeAC) and not issued by respondent as stated by the petitioner. Hence based on original return and revised

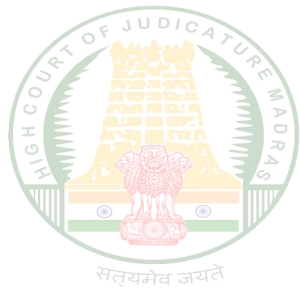


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return two notices were issued under CASS separately. And the notices were issued by the Assistant Commissioner of Income Tax (e-verification) and not by the respondent. Further all filing is through e-filing and no personal appearance was required. The petitioner stated that personal hearing was granted on 19.8.2019 and 28.8.2019. Further notice u/s 142(1) were issued on 19.08.2019 and 09.09.2019 requesting to furnish details through online. The respondent gave sufficient time from the month of August 2019 till October 2019 but the petitioner intentionally prolonged the submission of details.

11. After verification of particulars filed by the petitioner, the assessment was completed since the time limit for completion of assessment expired on 31.12.2019. In so far as the contention in paragraph 9, the respondent submitted that notice u/s.131 was issued to 120 borrowers but only 25 to 30 borrowers appeared. Only 10 to 15 borrowers appeared with loan card issued by petitioner relating to the period 2016-2017 and they were not aware of the denomination of cash paid during demonization period. Further, the details collected from the borrowers were not used against the petitioner, hence it is not requirement to share such details with the petitioner. Moreover, the petitioner did

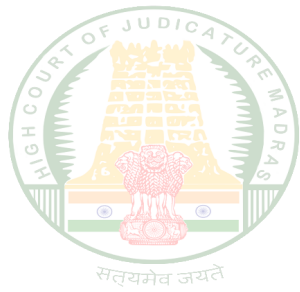


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not furnish the individual ledger account of borrowers and hence the details furnished by the borrowers are not verifiable. It is pertinent to mention that the Assessing Officer has not made any inquiry under Section 142(2) of the IT Act 1961. Hence, the petitioner's statement that there is violation of Section 142(3) is totally incorrect. Further in the present case, the addition was made u/S.68 and hence a provision of section 115BBE was applied in this case.

12. Further the plea of the petitioner it is applied retrospectively is incorrect, since the amendment was with effect from 01.04.2017 and hence the same is applicable for the previous year 2016-2017 and the assessment year 2017-2018. The amendment to section 115BBE is directly related to demonetization which would be evident from objects and reasons for such amendment. Interest u/S.234B and 234C were charged as per law. The contention of the petitioner that the amendment made in Section 115BBE cannot be applied retrospectively prior to 15.12.2016 is incorrect and the respondent submitted that the amendment to the Section 115BBE came into effect from the AY 2017-18 relevant to the previous year 2016-17 transactions and it is directly related to demonetization. Therefore, the respondent prayed to dismiss the writ petition.

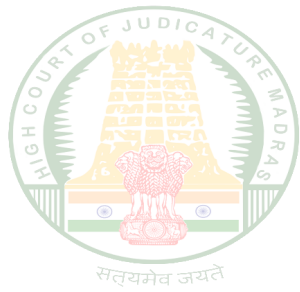


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13. The primary contention of the petitioner is that there is violation of principles of natural justice and submitted that the respondent issued notice u/s 133(6) to some borrowers and also to the banks. The information collected from the banks were never put to the petitioner but the impugned assessment order had relied on the information and added Rs.99,50,749/-, hence the same is violative of principles of natural justice. The contention of the respondent is that the respondent had issued notice u/s133(6) to 120 borrowers, then 25 to 30 borrowers appeared but only 10 to 15 borrowers had produced loan card. But the said details from the borrowers were not relied on by the respondent, hence there is no violation of principles of natural justice. As far as the details furnished by the banks, the petitioner is having details of the same, hence it is not necessary to call for any objections from the petitioner and hence there is no violation of principles of natural justice. After hearing the rival submissions, this Court perused the impugned order, wherein in paragraph 4 it has been stated that,

“Vide office notices u/s133(6) of the Act, the concerned banks were asked to furnish the details of denomination of the cash deposits by the assessee during demonetization period. The banks vide their replies furnished the details of cash deposited in the



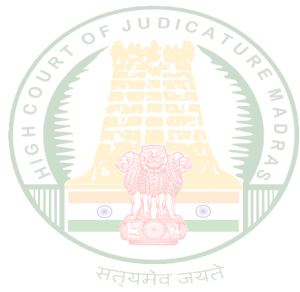
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*concerned bank accounts maintained with their branches. **On the basis of replies received from the banks a consolidated list of total deposits was prepared which is as under:***”

From the above it is evident that the respondent had relied on the replies furnished by the bank. In such circumstances, the respondent is bound to furnish the same before relying on the details. The reason stated by the respondent that the details are already with the petitioner cannot be acceptable. When the details relied on by the respondent and the details in possession of the petitioner tallies with each other ought to be seen, for the same an opportunity ought to be granted. When the same is not granted then it is violation of principles of natural justice.

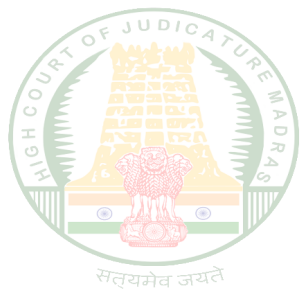
14. The petitioner further submitted that the respondent had issued notice u/s 143(2) dated 08.08.2019 for the return filed on 20.09.2017. Then had issued notice u/s 142(1) dated 09.08.2019 calling for various details and personal hearing was granted to the petitioner on 19.08.2019 and 28.09.2019. Again, notice u/s 143(2) dated 27.09.2019 was issued for the revised return dated 22.05.2019 and personal hearing was granted on 12.10.2019. Then the petitioner



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filed various details in the e-portal from 31.10.2019 to 13.12.2019. After filing the various details, the Tax Officer had not granted any personal hearing but passed the assessment order. Hence there is violation of principles of natural justice. However, the contention of the respondent is that personal hearing was granted for the proceedings u/s143(2) on 19.8.2019 and 28.8.2019. Further all filing is through e-filing and no personal appearance was required. Further notice u/s 142(1) were issued on 19.08.2019 and 09.09.2019 requesting to furnish details through online. It is pertinent to mention that the Assessing Officer has not made any inquiry under Section 142(2) of the IT Act 1961. Hence, the petitioner's statement that there is violation of Section 142(3) is totally incorrect. After hearing the rival submissions this Court is of the considered opinion that the respondent is incorrect in stating there is no violation of Natural Justice. For the assessment proceedings u/s143(2) the respondent had granted personal hearing on 19.08.2019 and 28.09.2019, then again on 12.10.2019. Thereafter the petitioner was directed to file various details and the petitioner had filed through e-portal from 31.10.2019 to 13.12.2019. After filing the same the respondent ought to have granted personal hearing, but the respondent failed to do so. The contention of the respondent after filing the various details, personal hearing is not necessary



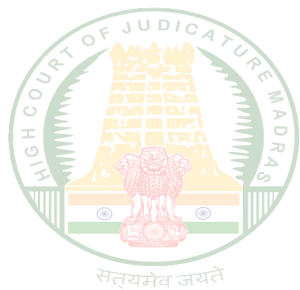
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is erroneous and unacceptable. Therefore, there is clear violation of principles of natural justice.

15. Having held there is violation of principles of natural justice, then the contention of the respondent that there is alternative remedy of statutory appeal ought to be rejected. Since if there is any violation of principles of natural justice, then the petitioner is having right to invoke writ jurisdiction.

16. The next contention raised by the Learned Senior Counsel is that the under section 115BBE the rate of tax imposed is increased from 30% to 60% and the same is applicable with effect from 01.04.2017 onwards as per the amendment. Therefore, the same is applicable to any transaction from 01.04.2017 onwards and nor prior to any transactions **prior to 01.04.2017**. Since in the present case all alleged transactions are for the period from 08.11.2016 to 30.12.2016, hence the erstwhile rate of tax 30% only is applicable. But the contention of the revenue is that the amendment was with effect from 01.04.2017 and hence the same is applicable for the financial year 2016-2017 and the assessment year 2017-2018. Further the amendment to section 115BBE is directly



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related to demonetization which would be evident from objects and reasons for such amendment. In order to consider the same, the objects and reasons of Taxation Laws (Second Amendment) Bill 2016 is extracted hereunder:

Press Information Bureau

Government of India

Ministry of Finance

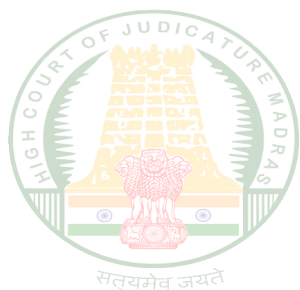
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Taxation Laws (Second Amendment) Bill, 2016 introduced in Lok Sabha; A scheme namely, 'Taxation and Investment Regime for Pradhan Mantri Garib Kalyan Yojana, 2016' (PMGKY) proposed in the Bill.

Evasion of taxes deprives the nation of critical resources which could enable the Government to undertake anti-poverty and development programmes. It also puts a disproportionate burden on the honest taxpayers who have to bear the brunt of higher taxes to make up for the revenue leakage. As a step forward to curb black money, bank notes of existing series of denomination of the value of Rs.500 and Rs. 1000 [Specified Bank Notes(SBN)] have been recently withdrawn the Reserve Bank of India.

Concerns have been raised that some of the existing provisions of the Income-tax Act, 1961 (the Act) can possibly be used for concealing black money. The Taxation Laws (Second Amendment) Bill, 2016 ('the Bill') has been introduced in the Parliament to amend the provisions of the Act to ensure that defaulting assesseees are subjected to tax at a higher rate and stringent penalty provision.

Further, in the wake of declaring specified bank notes "as not legal tender", there have been suggestions from experts that instead of allowing people to find illegal ways of converting their black money into black again, the Government should give them an opportunity to pay taxes with heavy penalty and allow them to come clean so



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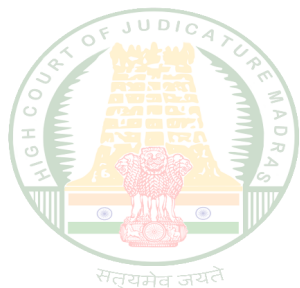
that not only the Government gets additional revenue for undertaking activities for the welfare of the poor but also the remaining part of the declared income legitimately comes into the formal economy.

In this backdrop, an alternative Scheme namely, 'Taxation and Investment Regime for Pradhan Mantri Garib Kalyan Yojana, 2016' (PMGKY) has been proposed in the Bill. The declarant under this regime shall be required to pay tax @ 30% of the undisclosed income, and penalty @10% of the undisclosed income. Further, a surcharge to be called 'Pradhan Mantri Garib Kalyan Cess' @33% of tax is also proposed to be levied. In addition to tax, surcharge and penalty (totaling to approximately 50%), the declarant shall have to deposit 25% of undisclosed income in a Deposit Scheme to be notified by the RBI under the 'Pradhan Mantri Garib Kalyan Deposit Scheme, 2016'. This amount is proposed to be utilised for the schemes of irrigation, housing, toilets, infrastructure, primary education, primary health, livelihood, etc., so that there is justice and equality.

An overview of the amendments proposed in the Bill are placed below;

Overview of Amendments Proposed

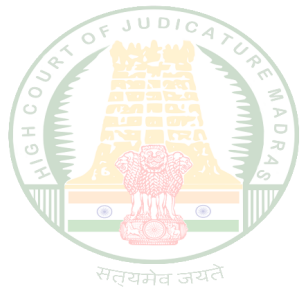
PARTICULARS	EXISTING PROVISIONS	PROPOSED PROVISIONS
General provision for penalty	<u>PENALTY (Section 270A)</u> Under-reporting - @50% of tax Misreporting - @200% of tax (Under-reporting/ Misreporting income is normally difference between returned income and assessed income)	No changes proposed



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Provisions for taxation & penalty of unexplained credit, investment, cash and other assets	<u>TAX (Section 115BBE)</u> Flat rate of tax @30% + surcharge + cess (No expense, deductions, set-off is allowed)	<u>TAX (Section 115BBE)</u> Flat rate of tax @60% + surcharge @25% of tax (i.e. 15% of such income). So total incidence of tax is 75% approx. (No expense, deductions, set-off is allowed) <u>PENALTY (Section 271AAC)</u> If Assessing Officer determines income referred to in section 115BBE, penalty @10% of tax payable in addition to tax (including surcharge) of 75%.
Penalty for search seizure cases	<u>Penalty (271AAB)</u> (i) 10% of income, if admitted, returned and taxes are paid (ii) 20% of income, if not admitted but returned and taxes are paid (iii) 60% of income in any other case	<u>Penalty (271AAB)</u> (i) 30% of income, if admitted, returned and taxes are paid (ii) 60% of income in any other case
Taxation and Investment Regime for Pradhan Mantri Garib Kalyan Yojana, 2016' (PMGKY)	New Taxation and Investment Regime	Undisclosed income in the form of cash & bank deposit can be declared: <u>(A) Tax, Surcharge, Penalty payable</u> Tax @30% of income declared Surcharge @33% of tax Penalty @10% of income declared Total @50% of income (approx.) <u>(B) Deposit</u> 25% of declared income to be deposited in interest free Deposit Scheme for four years.

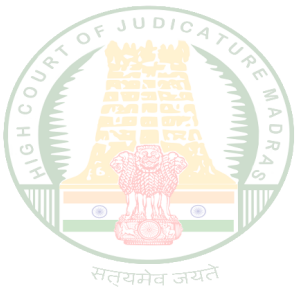


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17. In the aforesaid objects and reasons nowhere it is stated that due to “demonetization” the unaccounted money ought to be charged 60% rate of tax. It only states that step had been taken to curb black money by withdrawing Specified Bank Notes of denomination of Rs.500 and Rs.1000. And also states the people may find illegal ways of converting their black money into black again, hence as per experts advice heavy penalty ought to be levied. From the language of the object **“that instead of allowing people to find illegal ways of converting their black money into black again”**, it is evident that the government is intended to impose the same for future transactions. Especially the use of word **“again”** in the object would clearly indicate it is for future transactions i.e. from 01.04.2017. Therefore this Court is of the considered opinion that the revenue is empowered to impose 60% rate of tax for the transactions from 01.04.2017 onwards and not prior to the said cut-off date. And for prior transaction the revenue is empowered to impose only 30% rate of tax.

18. The next contention of the petitioner is that had deposited the cash available with it and the cash collected for the repayment of loan, wherein the said depositors had deposited the Specified Bank Notes. If the statement of

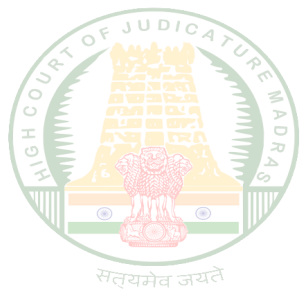


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accounts for the previous year is compared then there will not be unusual deposit amount. The Learned Senior Counsel appearing for the writ petitioner had relied on the judgment rendered in W.P.(MD)No.1732 of 2020 in the case of the ***Salem Sree Ramavilas Chit(P) Limited Vs. Deputy Commissioner of Income Tax, Circle -1(1)*** and submitted that in the cited case the assessee was a chit company where the subscribers had deposited the demonetised notes to the said chit company during the window period and the Hon'ble Court had held if the said deposit for the earlier assessment years are compared then there will not be variation at all and held the said deposit of notes cannot be concluded as unexplained income. The relevant portion is extracted hereunder:

“14.The Government of India demonetized Rs.500 and Rs. 1000 notes on 08.11.2016. Between 01.11.2016 and 08.11.2016, the petitioner had collected a sum of Rs.57,85,655/-which is also does not appear to be usual as compared to collections made during the November 2015. Out of the total collection of Rs.57,85,655/-and a closing cash of Rs.38,72,374/- as on 31.10.2016, the petitioner deposited an amount of Rs.26,77,716/- which is also not in variance with the cash deposits made by the petitioner during the preceding financial year. Collection of monthly subscription/dues by the petitioner during the aforesaid period appear to be reasonable as compared to be same period during 2015.

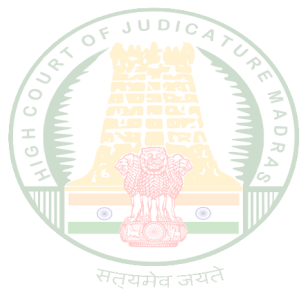


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15. *The Government of India has introduced E-Governance for conduct of assessment proceedings electronically. It is a laudable steps taken by the Income Tax Department to pave way for an objective assessment without human interaction. At the same time, such proceedings can lead to erroneous assessment if officers are not able to understand the transactions and statement of accounts of an assessee without a personal hearing. The respondent should have to be therefore at least called for an explanation in writing before proceeding to conclude that the amount collected by the petitioner was unusual.*

16. *In my view, the petitioner has prima facie demonstrated that the assessment proceeding has resulted in distorted conclusion on facts that amount collected by the petitioner during the period was huge and remained unexplained by the petitioner and therefore same was liable to be treated as unaccounted money in the hands of the petitioner under Section 69A of the Income Tax Act, 1961. Therefore, the impugned order making the petitioner liable to tax at the maximum marginal rate of tax by invoking Section 115BBE of the Income Tax Act, 1961 placing reliance on the decision of the Honourable Supreme Court in **Smt. Shrilekha Banerjee Vs. CIT**, 1964 AIR SC 697 appears to be misplaced.*

17. *Since the assessment proceedings no longer involve human interaction and is based on records alone, the assessment proceeding should have commenced much earlier so that before*

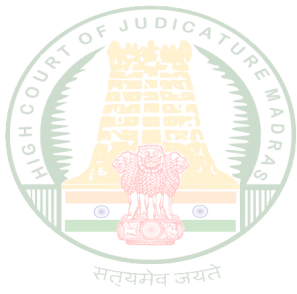


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passing assessment order, the respondent assessing officer could have come to a definite conclusion on facts after fully understanding the nature of business of the petitioner. It appears that the return of income was filed by the petitioner on 02.11.2017. However, the assessment proceeding commenced much later towards the end of the period prescribed under section 153 of the Income Tax Act, 1961. In my view, assessment proceeding under the changed scenario would require proper determination of facts by proper exchange and flow of correspondence between the petitioner and the respondent Assessing Officer.

18.Under these circumstances, the impugned order is set aside and the case is remitted back to the respondent to pass a fresh order within a period of sixty days from date of receipt of a copy of this order. Petitioner shall file additional representation if any by treating the impugned order as the show cause notice within a period of thirty days from date of receipt of a copy of this order. Since the Government of India has done away with the human interaction during the assessment proceedings, it is expected that the petitioner will clearly explain its stand in writing so that the respondent assessing officer can come to an objective conclusion on facts based on the records alone. It is made clear that the respondent will have to come to an independent conclusion on facts uninfluenced by any of the observation contained herein”

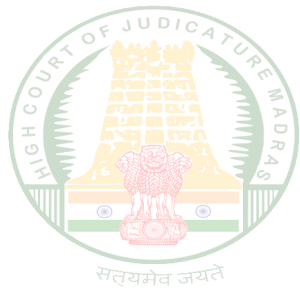


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19. In the present case also there was a plea by the writ petitioner that they had collected only repayment from the borrowers during the window period for the particular month alone. If the previous year collections are compared then there will not be any variation. On perusal of the assessment order, it is seen that the respondent has not compared the statement with the previous year. When there is a plea to compare the same with the previous year, failing to consider the said plea, then it is an erroneous order.

20. Therefore, the matter is remitted back for comparing the earlier statement of accounts. The respondent shall grant personal hearing. Hence, the impugned assessment order is set aside. The matter is remitted back to the respondent to consider the plea of the petitioner thereafter pass an order. The said exercise shall be completed within a period of 12 weeks. The petitioner shall cooperative with the revenue.



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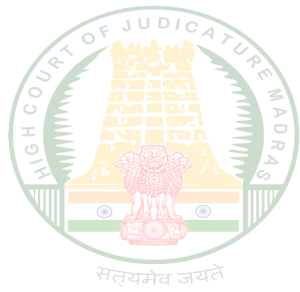
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21 With these observations and directions, this Writ Petition is allowed. No Costs. Consequently, connected miscellaneous petition is closed.

Index : Yes / No
Internet : Yes

19.11.2024

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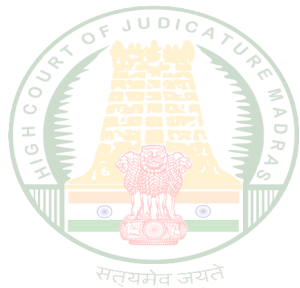


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To

The Assistant Commissioner of Income Tax,
Central Circle-1, Madurai.
Ground Floor, Income Tax Valuation Wing,
Additional Office Building,
Kulamangalam Main Road,
Meenambalpuram,
Madurai – 625 002.



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W.P.(MD)No.2078 of 2020

S.SRIMATHY, J

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Order made in

W.P.(MD)No. 2078 of 2020

19.11.2024