

(2021) 08 CAL CK 0086
In the Calcutta High Court
Case No : Writ Petition No. 11041 Of 2021

Unisource Hydro Carbon Services Pvt. Ltd. & Ors.	APPELLANT
Vs	
Union Of India & Ors.	RESPONDENT

Date of Decision : 25-08-2021

Acts Referred:

Constitution Of India, 1950 — Article 226
Income Tax Act, 1961 — Section 142, 142(1), 143(2), 143(3), 144B, 260A

Citation : (2021) 08 CAL CK 0086

Hon'ble Judges : Md. Nizamuddin, j

Bench : Single Bench

Advocate : R. N. Dutta, Sutapa Roychowdhury, Abhijit Das, S. N. Dutta, Asok Bhowmik

Final Decision : Dismissed

Judgement

Md. Nizamuddin, J

Heard learned Advocates appearing for the parties.

In the instant Writ Petition petitioner has challenged the impugned Assessment Order dated 4th June, 2021 relating to Assessment Year 2018-19 under Section 143 (3) read with Section 144 B of the Income Tax Act, 1961 on the alleged ground of violation of principle of natural justice by the respondent concerned by not giving adequate and effective opportunity of hearing to the petitioner and also on merit of the Assessment Order on the ground that the assessing officer has committed jurisdictional error and that the alternative remedy is no bar in entertaining this Writ Petition since violation of natural justice is a jurisdictional error.

It appears from the impugned Assessment Order being Annexure - 'P-7' at page - 111 of the Writ Petition that the aforesaid impugned order which is of about 17 pages containing elaborate discussion covering material evidence and considering the documents filed by the petitioner in course of the assessment proceeding

before passing the impugned Assessment Order. Petitioner was granted ample opportunity of hearing from time to time in course of impugned assessment proceeding which would appear from records being documents annexed to the Writ Petition by the petitioner itself which will be referred and discussed below.

It appears that a notice under Section 143 (2) of the Act was issued on 22nd September, 2019 being Annexure - 'P-2' to the Writ Petition seeking clarification on the issue of investments/advancements/loans and business loss in response to the return in question of the petitioner. It appears at page - 42 of the Writ Petition that a notice under Section 142 (1) of the Act was issued on 30th November, 2020 asking the petitioner to furnish the relevant documents referred there on or before 15th December, 2021. It appears at page- 48 of the Writ Petition that on 16th December, 2020 another notice under Section 142 (1) of the Act was issued for furnishing the documents in question since there was non compliance to the earlier notice under Section 143 of the Act which was duly served upon the petitioner via e-mail on 22nd September, 2019 and it had been also recorded in Annexure -'P-2' to the notice dated 16th December, 2020 that the earlier notice dated 30th November, 2021 issued under Section 142 of the Act was also not complied with though the date of compliance of the said notice was fixed on 16th December, 2020 and specifically recorded that final opportunity of being heard was being allowed to the petitioner to submit the details as called for by earlier notice dated 30th November, 2020 online by 20th December, 2020. It appears at page 50 of the Writ Petition that another notice under Section 142 (1) dated 18th January, 2021 of the Act was issued asking the petitioner to furnish the complete details as called for by the earlier notice dated 30th November, 2020, by 20th January, 2021. It appears at page - 52 of the Writ Petition that another notice under Section 142 (1) of the Act was issued on 20th January, 2021 for furnishing on or before 4th March, 2021 the accounts and documents specified in the annexure to the said notice. It appears at page - 54 of the Writ Petition that on 11th February, 2021 a further notice under Section 142 (1) of the Act was issued for compliance on or before 17th December, 2021 by furnishing the documents referred in annexure to the said notice. It appears from Annexure - 'P-4' at page - 66 of the Writ Petition that the petitioner had filed an application making prayer for granting further adjournment and extension of time till 24th May, 2021 for filing reply to the show-cause notice under Section 143 (3) of the Act, dated 23rd April, 2021.

The petitioner has annexed one Covid Test Report dated 5th May, 2021 as appeared at page - 68 of the Writ Petition of one Mr. Shyam Sundar Chowkhani claiming to be erstwhile director for the first time before the respondent authority though impugned proceeding was initiated much earlier and initially notice under Section 143 (2) of the Act was issued on 22nd September, 2019 and thereafter series of notices were issued and adjournments were granted from time to time. It appears at page - 73 of the Writ Petition that the prayer of adjournment being Annexure -'P-3' to the Writ Petition by the petitioner seeking further time till 24th May, 2021 was granted clarifying that no further opportunity will be

given.

It appears from page - 74 being Annexure -'P-6' to the Writ Petition that the petitioner had filed a reply on 24th May, 2021 before the Assessing Officer concerned by e-filing containing 34 pages in response to the show-cause notice dated 23rd April, 2021 discussing facts, laws, evidences and case laws in detail and as well as on merit relating impugned assessment proceeding and finally at the concluding portion at page 34 of the said application/reply to the aforesaid show-cause notice making further prayer for adjournment of the impugned assessment proceeding till 10th May, 2021 and to give further adequate opportunity for full compliance of the notice but had not asked for personal hearing.

It also appears from page 108 of the Writ Petition being index annexed to the Writ Petition that the petitioner has filed documents consisting of 400 pages containing details of loan creditors along with the aforesaid application/reply to the show-cause notice filed on 24th May, 2021 in course of the impugned assessment proceeding. It appears from page- 111 being Annexure -'P-7' to the Writ Petition that the Assessing Officer has passed the impugned Assessment Order containing 17 pages containing elaborate reason which will speak for itself after observing principles of natural justice in course of impugned assessment proceeding which will appear from the documents annexed to the Writ petition by the petitioner itself.

In Paragraphs 11 and 12 of the Writ Petition, petitioner itself has pleaded that by one of its letter dated 18th May, 2021, respondent concerned had provided last and final opportunity to produce the relevant evidence on or before 24th may, 2021 and has also pleaded that the petitioner uploaded a detailed reply to the show-cause notice along with some documents and supporting evidence in the official portal of the respondent authorities from which it appears that the petitioner has discussed on merit including making submission with regard to loan transactions in question in reply to the aforesaid show-cause notice.

Petitioner has challenged the aforesaid impugned Assessment Order both on merit as well as on the alleged ground of violation of principle of natural justice by the respondent concerned by not providing opportunity of hearing which according to the petitioner is jurisdictional error. So far as the challenge to the impugned Assessment Order on merit and dealing with facts and evidences are concerned I am of the considered view that the Income Tax Act is a self-complete code and the petitioner has specific statutory appellate forum for redressal of its grievance if so aggrieved against the impugned assessment order, before the Commissioner of Income Tax (Appeals) and further appeal before the Income Tax Appellate Tribunal which has the power to decide both on facts as well as on law and further before the High Court under Section 260A of the Income Tax Act. In my considered opinion High Court sitting in Writ Jurisdiction under Article 226 of the Constitution of India should not disturb or interfere with the finding of the Assessing Officer in his assessment order which are based on material facts and

evidence and to substitute the findings of an Assessing Officer in the assessment order with its own finding when statutory alternative remedy for adjudication of assessment order on merit, evidence and law is available under Income Tax Act, 1961 before the Appellate forum. Now the only question which remains to be considered for entertaining this Writ Petition is as to whether principles of natural justice was violated or not by the respondent concerned in course of impugned assessment proceeding to which my answer is in negative and detail reasoning for this view will appear in later part of this judgment.

Petitioner in support of its contention of violation of principles of natural justice, has relied on several unreported decisions of different High Courts which are discussed herein below.

Petitioner has relied on a decision of the Madras High Court dated 28th April, 2021 in WP No. 10693 (W) of 2021 in the case of M/s. Magick Woods Exports Pvt. Ltd. -vs- Additional/Joint/Deputy/Assistant Commissioner of Income Tax & Anr. It appears that the facts of the said decision is different from the present case since in the said case adjournment was sought only for once and that was neither rejected nor the assessee was intimated before making assessment while in the present case series of adjournments were granted to the petitioner from time to time and was allowed to file documents which are matters of record.

Another unreported decision upon which the petitioner has relied on is of Delhi High Court, dated 8th July, 2021, in the case of International Management -vs- National Faceless Assessment Centre & Anr. Facts of the said case is also different from the present case since in the said case basis of assessment was not furnished to the petitioner and no draft Assessment Order was issued to the petitioner which is not the facts herein and not the ground of challenge in the instant Writ Petition.

Petitioner has relied on another unreported decision of the Bombay High Court, dated 12th May, 2021, in Writ Petition (ST) No. 10639 of 2021 in the case of Suresh Kumar Lokhotia -vs- National e-Assessment Centre & Ors. In the said case also the fact is different from the present case as appears from the said decision that in the said case the petitioner's response to the draft assessment was not considered and notice of demand was raised.

Petitioner has relied on another decision of the Bombay High Court in the case of Raja Builders -vs- National Faceless Assessment Centre reported in (2021) 127 taxmann.com 339 (Bombay) dated 13th May, 2021 where facts of the said case is also different from the present case since in the said case the allegation of the petitioner was that there was glitches in the operation of Faceless Assessment Scheme and in that case a show-cause notice was issued on 20th April, 2021 and a draft Assessment Order was issued to the petitioner requiring to show cause as to why the assessment should not be completed in terms of the draft assessment order and the said show-cause notice appeared for the first time on the E-filing portal on 22nd April, 2021 and on the same day petitioner filed a detailed reply

and sought an opportunity of being heard and on 23rd April, 2021 the petitioner had filed a detail reply to the show-cause notice with documentary evidence and without considering his request for hearing or the detailed reply, Assessment Order was passed on the same day, that is, on 23rd April, 2021 while in the instant case Writ Petitioner was given ample opportunities of reply to the notices issued from time to time and to file documents in support of its case before passing the impugned assessment order which are matters of record.

Petitioner has also relied on an unreported decision of the Delhi High Court dated 2nd June, 2021 in W.P.(C) 5741/2021 in the case of Sanjay Aggarwal -vs- National Faceless Assessment Centre Delhi where facts of the said case is also different from the present case since in the said case adjournment was sought for grant of personal hearing on two dates, that is, 15th April, 2021 and 20th April, 2021 which was not considered by the revenue and it proceeded with the show-cause notice with a draft Assessment Order dated 20th April, 2021 and petitioner was directed to file its response/objection by 23.59hrs of 25th April, 2021 and the Assessment Order was passed on 28th April, 2021 while in the instant case principles of natural justice by way of enough opportunities were provided to the petitioner.

Petitioner has relied on Paragraph - 20 of one judgment of this Court in the case of Hindustan Pilkington Glass Works Ltd. -vs- Superintendent Central Excise, Asansole & Ors. reported in 1978 E.L.T. (J 229) on the proposition of breach of principle of natural justice. The said case is also distinguishable from the present case as it would appear from Paragraph - 8 of the said judgment that in the said case, before determining the assessable value, the respondent never provided any opportunity whatsoever to the petitioner to make the representation and the petitioner was never required by the respondent to explain before making disallowance and addition and no notice was issued to the petitioner requiring him to make its representation in the matter before passing various impugned orders determining the assessable value of different periods in respect of different varieties of goods. Facts of the present case are totally different from the said case which are matters of record and the said case is distinguishable and not at all applicable to the facts of the instant case.

On perusal of relevant records including the documents annexed to the Writ Petition and considering the submission of the petitioner and the decisions relied upon by it, in my considered opinion, it cannot be said that this is a case where no opportunity of hearing was provided to the petitioner and that there was any violation of principle of natural justice. It is established from record that series of adjournments were granted on the prayer of the petitioner from time to time and the petitioner did not comply with many notices and sometime in response to some of the notices on some occasion replied to the show-cause notice in detail and furnished material evidence and documents in support of its case before the Assessing Officer in course of impugned assessment proceeding. In my considered opinion petitioner could not make out a case of any patent

jurisdictional error or that the assessing officer acted contrary to any specific provision of law in course of the impugned assessment proceeding.

In view of the discussion made above and after taking into the consideration records available/annexed to the Writ Petition, in my considered opinion, sufficient opportunities of hearing were given to the petitioner and there was no violation of principles of natural justice in course of impugned assessment proceeding and in passing the assessment order and in the instant case it cannot be said that the assessing officer/respondent concerned who passed the assessment order was having inherent lack of jurisdiction or his action in course of impugned assessment proceeding was contrary to any specific provision of law and the impugned assessment order is not liable to be interfered with in constitutional writ jurisdiction of this Court under Article 226 of the Constitution.

Accordingly, this Writ Petition being WPA No. 11041 of 2021 is dismissed with no order as to costs.

Urgent certified photocopy of this judgment, if applied for, be supplied to the parties upon compliance with all requisite formalities.