

Reassessment order passed without waiting for assessee to submit asked documents was unjustified: HC

Summary – The High Court of Madras in a recent case of Kovalam Santhana Krishnan Mohan, (the Assessee) held that where on receipt of objections to reassessment notice, revenue directed assessee to produce relevant documents, however, without waiting for assessee to file said documents, a reassessment order was passed making additions to income of assessee, same was unjustified

Facts

- The assessee had not filed his return of income for the assessment year 2010-2011 and on verifying the ITS details available in the AST, it was found that the assessee sold immovable properties during the financial year 2009-10 (relevant to the assessment year 2010-11). Apart from that, there was also an allegation that the assessee received professional/technical services fees rendered for a company. Therefore, the Income-tax Officer stated that since the assessee had not filed return of income admitting any income from capital gains or profession, he had reason to hold that the income chargeable to tax had escaped assessment as per section 147.
- The assessee submitted a reply stating that as the transactions were effected during the assessment year 2009-10, the assessee filed his return of income, the returns were accepted and the tax had been paid. Since, there was no income for the assessment year 2010-11, the assessee did not file his return.
- On receipt of the objections the revenue, sent notice to the assessee, by which, the assessee was directed to produce a copy of the profit and loss account, balance sheet and auditor's report under section 44AB for the assessment year 2009-10 with copies of the sale deeds as mentioned in the earlier order on or before 27-9-2017, to verify the assessee's contention. However, without waiting for assessee to file said documents, the revenue passed a reassessment order under section 148.
- In instant writ petition, the assessee contended that the revenue could not have passed the impugned order on 25-9-2017, as he fixed the date for production of documents on 27-9-2017.

Held

- The above facts clearly show that there has been violation of the principles of natural justice. The assessee having been afforded an opportunity to produce the records on or before 27-9-2017, the revenue should have waited till 27-9-2017.
- The explanation offered by the revenue that the officer himself has secured the documents from the concerned Sub-Registrar and therefore, proceeded to pass the impugned order, is not a convincing reply, as the officer by intimation dated 11-9-2017, not only called for the copies of documents, but also the copies of the profit and loss account, the balance sheet and auditor's report under section 44AB for the assessment year 2009-10. Thus this Court is convinced that the impugned order has

been passed in violation of the principles of natural justice. These are sufficient reasons to hold that the impugned order cannot stand to the test of law.

- In the result, the writ petition is allowed, the impugned order was set aside and the matter was remitted back to the respondent for a fresh consideration. The respondent shall afford an opportunity of personal hearing, peruse the documents filed by the assessee along with their representation dated 27-9-2017, examine the profit and loss account, balance sheet and auditor's report under section 44AB for the assessment year 2009-10 and pass a reasoned order on merits and in accordance with law. No costs. Consequently, the connected miscellaneous petitions are closed.