

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 14TH DAY OF AUGUST, 2015

PRESENT

THE HON'BLE MR. JUSTICE VINEET SARAN

AND

THE HON'BLE MR. JUSTICE B. MANOHAR

W.A.NO.218/2015(T-IT)

BETWEEN:

M/S.KOTHARI METALS
OMKAR HOUSE,
NO.8/1, 4TH CROSS,
KALASIPALYAM NEW EXTENSION
BANGALORE-560 002
REP. BY ITS PROPRIETOR
MR.SURESH KUMAR KOTHARI
S/O SHA POONAMCHAND GALBAJI
AGED ABOUT 40 YEARS.

...APPELLANT

(BY SRI HARISH V.S., ADV.,)

BETWEEN:

INCOME TAX OFFICER
WARD 1(4), HMT BHAVAN,
BANGALORE-560 032.

...RESPONDENT

(BY SRI K.V.ARAVIND, ADV., A/W SRI E.I.SANMATHI, ADV.,)

THIS WA IS FILED U/S 4 OF THE KARNATKA HIGH COURT ACT PRAYING TO SET ASIDE THE ORDER PASSED IN THE WRIT PETITION NO.14670/14 DATED 11.12.2014.

THIS WA COMING ON FOR PRLY. HEARING THIS DAY, **VINEET SARAN J.**, DELIVERED THE FOLLOWING:

JUDGMENT

This is an appeal filed by the assessee against the judgment and order dated 11.12.2014 passed by the learned Single Judge in W.P.No.14670/2014 whereby the petition challenging the notice under Section 148 of the Income Tax Act, 1961 (for short 'the Act') has been dismissed on the ground of availability of alternative remedy.

2. The brief facts of this case are that for the assessment year 2006-07 the appellant had filed its return of income, which was accepted under Section 143(1) of the Income Tax Act, 1961 (for short 'the Act') on 14.06.2007. Subsequently, on 28.03.2013, notice under Section 148 of the Act was issued for re-opening of the assessment. In response to the same, the appellant requested the respondent to treat the earlier return filed as the return filed in response to the notice issued under Section 148 of the Act. The appellant also prayed for furnishing the reasons for issuance of notice under Section 148 of the Act. Even when no reason for the issuance of the notice was furnished to the appellant, the Assessing Officer commenced proceedings for re-assessment of the income of the assessee/appellant for the

said assessment year and issued questionnaire under Section 142(1) of the Act.

3. From the questionnaire issued to the assessee, it appears that re-opening of the assessment was on the basis of statement recorded by the Income Tax authorities of some other person, which statement was never furnished to the appellant. The appellant, thus, contends that besides the non-furnishing of the reasons for re-opening the assessment, principles of natural justice were also not complied in the present case in as much as the appellant was not even furnished the statement, which was required to be explained by the appellant before the Assessing Officer.

4. Sri K.V.Aravind, learned counsel appearing for the respondent has, however, submitted that since the re-assessment order has now been passed on 31.01.2014, the same can be challenged in appeal and, as such dismissal of the writ petition on the ground of availability of alternative remedy is perfectly justified.

5. We have heard learned counsel for the parties and perused the record.

6. The question of non-furnishing the reasons for re-opening an already concluded assessment goes to the very root of the matter. After filing of the return in response to the notice issued under Section 148 of the Act or on request of the assessee requesting that the return of income initially filed be treated as a return of income filed in response to such notice, the assessee is entitled to be furnished the reasons for such re-opening, which can also be challenged independently. Since such reasons had not been furnished to the appellant, even though a request for the same had been made, we are of the opinion that proceedings for the re-assessment could not have been taken further on this ground alone.

7. Besides this, it is not disputed that the statement of some other person which was recorded and the appellant was asked to explain the same, was itself not furnished to the appellant-assessee. As such, besides non-furnishing of reasons for re-opening, there was also gross violation of principles of natural justice and in view of the aforesaid, we are of the opinion

that writ petition against the re-assessment order dated 31.01.2014 ought to have been entertained and that dismissal of the writ petition on the ground of availability of alternative remedy was not justified in the facts of the present case.

8. Since we are of the opinion that the re-opening of assessment under Section 143 of the Act was itself bad in law, we set-aside the order passed by the writ Court and as well as the re-assessment order dated 31.01.2014. Accordingly, ***this appeal as well as the writ petition stand allowed.***

9. However, it may be observed that the respondent shall be at liberty to proceed in the matter, in accordance with law, after furnishing reasons for issuance of notice under Section 148 of the Act, if law so permits. No order as to costs.

All pending applications stand consigned to file.

**Sd/-
JUDGE**

**Sd/-
JUDGE**

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