

THE HON'BLE SRI JUSTICE P.SAM KOSHY

AND

THE HON'BLE SRI JUSTICE NARSING RAO NANDIKONDA

WRIT PETITION No.11006 of 2025

ORDER: *(per the Hon'ble Sri Justice P.Sam Koshy)*

Heard Mr. A.V.A. Siva Kartikeya, learned counsel for the petitioner, and Mr. Vijhay K. Punna, learned Senior Standing Counsel for the Income Tax Department appearing for the respondents.

2. The instant is a petition which has been filed by the petitioner under Article 226 of the Constitution of India praying the Court to declare the Assessment Order in DIN: ITBA/AST/S/143(3)/2024-25/1074359177(1), dated 11.03.2025, passed by respondent No.1 for the assessment year 2023-24 under Section 143(3) read with Section 144 B of the Income Tax Act, 1961 as illegal, void-ab-initio, violative of the principles of natural justice and being violative of Articles 14, 19(1)(g) and 265 of the Constitution of India; and also to set aside the show-cause notice on the proposed variations for the assessment year 2023-24, dated 28.02.2025.

3. At the outset, the learned counsel for the petitioner submits that he is assailing the show-cause notice only on the ground of it being in violation

of the Standard Operating Procedure (for short, the ‘SOP’) of the Department itself dated 03.08.2022 and, therefore, the impugned order is liable to be interdicted on this ground alone. According to the learned counsel for the petitioner, it was for this reason that he had approached the writ Court as the issuance of the show-cause notice and the subsequent passing of the assessment order is in violation of the principles of natural justice.

4. Learned counsel for the petitioner referred to clause N.1.3 of the SOP dated 03.08.2022, which for ready reference is reproduced hereunder, viz.,

“N.1.3 To ensure adherence to the principles of natural justice and reasonable opportunity to the assessee, timelines to be given for obtaining response to the SCN shall be:

N.1.3.1 Response time of 7 days from the issue of SCN.

N.1.3.2 Response time of 7 days may be curtailed, keeping in view the limitation date for completing the assessment.”

5. According to the learned counsel for the petitioner, the aforesaid clause itself has been inserted by the Department ensuring adherence of the principles of natural justice and granting reasonable opportunity to the assessee before an order is passed. In the instant case, the show-cause notice was issued on 28.02.2025 and the period for responding to the same

was only four days as the petitioner was asked to report along with all relevant documents and response on 05.03.2025. This apparently was less than a period of seven days that was given in the SOP.

6. It was further contended by the learned counsel for the petitioner that of the four days period, two days itself were non-working days i.e. 01&02.03.2025 being Saturday and Sunday, during which time it was difficult for the petitioner to collect necessary data from the office as they were closed and practically only two working days were given to the petitioner to file an effective response. It was also the contention of the learned counsel for the petitioner that once when the SOP was binding upon the authority concerned, there was no strong case made out by the Department for not granting seven days time as is required under the SOP in responding to the notice.

7. Learned counsel for the petitioner, in support of his contentions, referred to the two decisions rendered by this very Bench in Writ Petition No.11712 of 2025 decided on 24.04.2025 and Writ Petition No.10685 of 2025 decided on 16.04.2025.

8. Learned Senior Standing Counsel for the Income Tax Department, however opposing the petition, submits that from the pleadings available on record will clearly reflect that the petitioner had been given sufficient opportunity of responding to the show-cause notice that was issued earlier under Section 142(1) of the Income Tax Act, 1961 (for short, 'the Act') to which there was no response by the petitioner. Therefore, he cannot now cry foul of not having got sufficient time to respond to the notice.

9. Similarly, the learned Senior Standing Counsel for the Income Tax Department also submits that it was not that the petitioner was taken by surprise by the show-cause notice. Rather, he was well aware of the notices those were issued on 25.07.2024 under Section 142(1) of the Act and it was repeated by another notice on 07.10.2024 and to both of these notices there was no response. Thereafter, a non-compliance report was sent to him on 27.10.2024 giving another five days time for response and the petitioner did reply by filing reply and documents on 29.10.2024. There were certain additional documents and responses also furnished by the petitioner to the Department on 19.12.2024. With all these responses by the petitioner, he could had easily responded to the impugned show-cause notice dated 28.02.2025 within the time prescribed in the notice. Therefore, the writ

Court is not required to entertain the instant petition at this juncture, rather should permit the petitioner to avail the alternative statutory remedy that he has of an appeal.

10. Having heard the contentions put forth on either side and on perusal of records, admittedly the show-cause notice under challenge is one which was issued on 28.02.2025 i.e. the last day in the month of February. The time granted to respond to the said show-cause notice was only four days as the petitioner was called upon to appear before the authority concerned on 05.03.2025 even though 01&02.03.2025 were non-working days being Saturday and Sunday. Thus, the effective days given under the show-cause notice was only four days.

11. The extracts of the SOP dated 03.08.2022 has been reproduced in the earlier paragraph of this order in which appears to be a clear mandate by the Department that in the event if the show-cause notice is given, a reasonable fair period of time should be given to the assessee to respond and the reasonable period fixed by the Department itself was seven days. No doubt the SOP provides for an exception wherein in a given case for curtailing the requirement of seven days time and which is being harped by the learned Standing Counsel for the Income Tax Department in the present

case. Nonetheless, what is required to be seen is that the said exception which has been carved out is only in the event of limitation date for completing assessment is coming in the way.

12. In the instant case, the show-cause notice having been issued on 28.02.2025, the Department had around thirty one days time before the assessment order could have been passed. In view of the same, if the petitioner instead of being called upon on 05.03.2025, if he would have been called upon on 07.03.2025 or on 08.03.2025, the requirement as per the SOP could have been met and the assessment order would still have been passed with clear two or three weeks time left with the Department. The fact that the petitioner after having submitted his reply to the non-compliance report on 29.10.2024, the Department took almost four months' time for issuance of the next show-cause notice i.e. the show-cause notice dated 28.02.2025. The Department itself could have issued the show-cause notice on an earlier date so that they themselves would have had reasonable time left with them for comfortably completing the assessment, for which again the Department alone which has to be held responsible. The petitioner cannot be blamed for such actions on the part of the Department in any manner. Moreover, we are also inclined to endorse the view taken by this very

Bench in two writ petitions of similar nature which we had disposed i.e. Writ Petition No.10685 of 2025 and Writ Petition No.10685 of 2025 which were decided on 24.04.2025 and 16.04.2025 respectively.

13. Though the learned Senior Standing Counsel for the Income Tax Department has referred to a couple of judgments in support of his contentions, but we find that those judgments are not applicable to the facts of the present case, as none of those judgments deal with the clauses of SOP those which have been invoked by the petitioner for assailing the impugned order and notice in the instant writ petition. Hence, those judgments are distinguishable on facts itself.

14. For all the aforesaid reasons, the show-cause notice dated 28.02.2025 and the assessment order dated 11.03.2025 are not sustainable and the same deserve to be and are accordingly set aside / quashed. At the same time, we are inclined to remit the matter back to the authority concerned i.e. respondent No.1 to permit the petitioner to file a detailed response to the show-cause notice dated 28.02.2025 within a period of seven days time and for which the respondent No.1 shall take necessary steps in opening the portal and enable the petitioner to submit his response. Further, upon opening of the portal, the respondent No.1 shall give an intimation to the

petitioner in respect of the same. Since we have given a clear indication to respondent No.1 for opening of the portal and as also to the petitioner to submit their response, we do not find any further requirement for issuance of a fresh notice by respondent No.1 to the petitioner for the same.

15. With the aforesaid observations and directions, the writ petition stands allowed and disposed of. No costs.

16. As a sequel, miscellaneous petitions pending if any, shall stand closed.

P.SAM KOSHY, J

NARSING RAO NANDIKONDA, J

Date: 25.06.2025
GSD