Ramoji Rao and another — Writ Petition No. 15939 of 2008 and connected matters

Page 1 of 27

IN THE HIGH COURT FOR THE STATE OF TELANGANA ::HYDERABAD:: *** Writ Petition No.15939 of 2008; Writ Petition No.16011 of 2008; Writ Petition No.16012 of 2008; Writ Petition No.16032 of 2008; and Writ Petition No.16033 of 2008

Between:

Ramoji Rao and another ...petitioners

and

The Additional Commissioner of Income Tax, and 3 others ...respondents

COMMON ORDER PRONOUNCED ON: 12.06.2026

THE HON'BLE SRI JUSTICE P.SAM KOSHY AND THE HON'BLE SRI JUSTICE SUDDALA CHALAPATHI RAO

1. Whether Reporters of Local newspapers may be allowed to see the Judgments? : Yes

2. Whether the copies of judgment may be marked to Law Reporters/Journals? : Yes

3. Whether His Lordship wishes to see the fair copy of the Judgment? : Yes

__________________ P.SAM KOSHY, J Page 2 of 27

* THE HON'BLE SRI JUSTICE P.SAM KOSHY AND THE HON'BLE SRI JUSTICE SUDDALA CHALAPATHI RAO

+ Writ Petition No.15939 of 2008; Writ Petition No.16011 of 2008; Writ Petition No.16012 of 2008; Writ Petition No.16032 of 2008; and Writ Petition No.16033 of 2008

% 12.06.2026

Between: Ramoji Rao and another ..Petitioners VERSUS

The Additional Commissioner of Income Tax, and 3 others ... Respondents

! Counsel for petitioners : 1. Mr. S. Ravi, learned Senior Counsel; 2. Mr. Vimal Varma Vasi Reddy. 3. Mr. A. Ram Dheeraj

^Counsel for the respondents : Mr.K. Sudhakar Reddy, learned Senior Standing Counsel for the Income Tax Department.

<GIST: > HEAD NOTE:

? Cases referred 1. (2016) 16 S.C.C. 675 2. 2022 SCC Online TS 3568 3. 2024 SCC Online AP 5814 4. 2025 SCC Online SC 2562 Page 3 of 27

5. (2006) 12 SCC 33 6. (2010) 13 SCC 427 7. (2004) 271 ITR 223 8. (2006) 285 ITR 179 9. (2011) 331 ITR 116 10. (2015) 379 ITR 100 11. I.T.A.No.139/Mum/2012, dated 03.08.2016, Income Tax Appellate Tribunal, "D" Bench, at Mumbai 12. (2016) 16 SCC 673 13. (2023) 332 CTR 614 14. (2016) 286 CTR (Ker) 9-Ed. 15. R/Tax Appeal No.574 of 2023, dated 09.20.2023, High Court of Gujarat, at Ahmedabad 16. 2024 SCC OnLine AP 5814 17. [2015] 379 ITR 100 (Kerala) Page 4 of 27

THE HIGH COURT FOR THE STATE OF TELANGANA AT HYDERABAD THE HON'BLE SRI JUSTICE P. SAM KOSHY AND THE HON'BLE SRI JUSTICE SUDDALA CHALAPATHI RAO

Writ Petition No.15939 of 2008; Writ Petition No.16011 of 2008; Writ Petition No.16012 of 2008; Writ Petition No.16032 of 2008; and Writ Petition No.16033 of 2008 Date :: 12.06.2026

Ramoji Rao and another ...petitioners

and

The Additional Commissioner of Income Tax, and 3 others ...respondents

COMMON ORDER : : (Per Hon'ble Sri Justice P. Sam Koshy) Since the question of law and the factual matrix of the case are all identical in nature in the present batch of writ petitions, they are therefore taken up for hearing and are being decided by this Common Order.

2. Heard Mr. S. Ravi, learned Senior Counsel; Mr. Vimal Varma Vasi Reddy; and Mr. Undavalli Naveen, learned counsel appearing on behalf of Ms.Dammalapati Manasa and Mr. A. Ram Dheeraj, learned Page 5 of 27 counsel for the petitioners; and Mr.K. Sudhakar Reddy, learned Senior Standing Counsel for the Income Tax Department, for the respondents.

3. These are batch of writ petitions whereby challenge is primarily to the order of penalty that was passed under of the Income Tax Act, 1961 by the respondents. For convenience, the facts in Writ Petition No.16011 of 2008 are discussed hereunder.

4. Writ Petition No.16011 of 2008 is filed by the petitioners under of the Constitution of India seeking for issuance of a writ of mandamus or any other writ or order or direction by declaring that the proceedings and the show cause Notice bearing F.No.Addl.CIT/R16/MF/SC/200102, dated 14.07.2008, (for short, 'the impugned show-cause notice) and all consequential proceedings on

the file of first respondent as arbitrary, violative of principles of natural justice under and of the Constitution of India and also the provisions of the read with various circulars issued by respondent No.3; to consequently set aside the same; and to direct respondent Nos.1 and 4 to not initiate any further action and penalty under or 271D of the Income Tax Act 1961. Page 6 of 27

5. The facts in brief relevant for adjudication of present batch of writ petitions are that : the petitioner No.1-establishment is a Hindu Undivided Family (HUF) which has several business units in the erstwhile State of Andhra Pradesh, and now in the two States, i.e., the State of Telangana as also in the State of Andhra Pradesh, is one of the business unit under the Hindu Undivided Family (HUF), i.e., Margadarsi Financiers.

6. The petitioners have been prosecuted and penalized by the respondents by invoking of the Income Tax Act, 1961 (for short, 'the Act').

7. of the Act is applied upon violation of provisions of . is a provision which appears in business entity in receiving funds exceeding Rs.20,000/- by way of cash which, in other words, would mean that under any transaction exceeding Rs.20,000/- has to be by way of cheque, draft, pay orders and other on-line transaction other than cash transaction. Any business entity violating the statutory requirement under will stand penalized under of the Act.

8. For ready reference, of the Act is reproduced hereunder, viz., Page 7 of 27 "269SS.Mode of taking or accepting certain loans, deposits and specified sum.--No person shall take or accept from any other person (herein referred to as the depositor), any loan or deposit or any specified sum, otherwise than by an account payee cheque or account payee bank draft or use of electronic clearing system through a bank account, if,-- > (a) the amount of such loan or deposit or specified sum or the aggregate amount of such loan, deposit and specified sum; or

> (b) on the date of taking or accepting such loan or deposit or specified sum, any loan or deposit or specified sum taken or accepted earlier by such person from the depositor is remaining unpaid (whether repayment has fallen due or not), the amount or the aggregate amount remaining unpaid; or > (c) the amount or the aggregate amount referred to in clause (a) together with the amount or the aggregate amount referred to in clause (b), is twenty thousand rupees or more:

> Provided that the provisions of this section shall not apply to any loan or deposit or specified sum taken or accepted from, or any loan or deposit or specified sum taken or accepted by,--

> (a) the Government;

> (b) any banking company, post office savings bank or co-operative bank; > (c) any corporation established by a Central, State or ;

> (d) any Government company as defined in clause (45) of of the Companies Act, 2013 (18 of 2013);

> (e) such other institution, association or body or class of institutions, associations or bodies which the Central Government may, for reasons to be recorded in writing, notify in this behalf in the Official Gazette: > Provided further that the provisions of this section shall not apply to any loan or deposit or specified sum, where the person from whom the loan or deposit or specified sum is taken or accepted and the person by whom the loan or deposit or specified sum is taken or accepted, are both having agricultural income and neither of them has any income chargeable to tax under this Act.

9. Likewise, of the Act is also reproduced hereunder for ready reference, viz., Page 8 of 27 "271D. Penalty for failure to comply with the provisions of .-- 7[(1)] If a person takes or accepts any loan or deposit [or specified sum] in contravention of the provisions of , he shall be liable to pay, by way of penalty, a sum equal to the amount of the loan or deposit 8[or specified sum] so taken or accepted. [(2) Any penalty imposable under sub-section (1) shall be imposed by the [Joint Commissioner]"

10. The provisions of Section 217D and are similar to the provisions of and of the Act.

11. The instant Writ Petition pertains to Assessment Year 2001-02 where the assessment order was passed on 28.12.2010 much after filing of the writ petition which was initially filed challenging the show- cause notices itself in all the present writ petitions. The order of penalty had been passed by the respondents subsequent to passing of assessment orders. For ready reference, the brief details of the Writ Petition number, Assessment Year and the date of Assessment Order are being tabulated herein, viz., Sl.No. Writ Petition No. Assessment Year Date of Assessment Order

01. W.P.No.15939 of 2008 2002-03 25.07.2003

02. W.P.No.16011 of 2008 2001-02 28.12.2010

03. W.P.No.16012 of 2008 2003-04 27.03.2006

04. W.P.No.16032 of 2008 2004-05 29.12.2006

05. W.P.No.16033 of 2008 2005-06 26.12.2007

12. The petitioner has challenged the proceedings initiated under on various grounds including the preliminary objection of the impugned order of assessment having been passed by an officer Page 9 of 27 who is otherwise not competent under the statute, i.e., the , to pass the impugned order under .

13. A plain reading of (reproduced in the preceding paragraph) would go to establish that an order of penalty under can be imposed only by an officer of the Rank of "Joint Commissioner". In all the batch of writ petitions herein, the order of penalty had been imposed by the same authority who is not the Joint Commissioner but in the hierarchy of the officer higher than the Joint Commissioner. All the impugned orders in the instant batch of writ petitions have been passed by the Additional Commissioner. Thus, the preliminary objection raised by the petitioners is that the impugned orders have been passed by an officer who is incompetent under the Act, and therefore, the same amounts to an order being passed outside the jurisdiction of the Additional Commissioner.

14. The other grounds on which the impugned order was challenged is that proceedings under stands vitiated for the simple reason that a satisfactory finding for initiating penalty proceedings under is missing in the assessment order passed in all the writ petitions. According to the petitioners, in the absence of a satisfactory finding for initiation of penalty proceedings being reflected in the assessment orders, the very initiation of the proceedings and Page 10 of 27 the impugned orders passed finally, stands vitiated in the absence of any discovery and

the consequent finding given by the Assessing Officer insofar as the so-called violation of provision of . In addition, there was also categorical denial by the petitioners insofar as receiving of deposits of more than Rs.20,000/- by way of cash. It was the specific contention of the learned counsel for the petitioners that petitioners have been insisting upon receiving of deposits only by way of cheques, payment drafts or pay order drawn in the name of petitioners and since the depositors predominantly belong to the rural background, they approached the agents at the petitioners' sister entity which worked as a facilitation center wherein they assisted the depositors in obtaining the payment drafts and pay orders. It is also the specific contention of the petitioners that they never accepted any deposit in cash exceeding Rs.20,000/- by way of cash, whereas small investments and small deposits of less than Rs.20,000/- were being permitted to be deposited by way of cash.

15. In support of their contentions, learned counsel for the petitioners relied on the following decisions, viz., (1; 1 (2; 3 ; 4; 5; and 6.

16. Per contra, learned Senior Standing Counsel for the Income Tax Department, appearing for the respondents, contended that none of the grounds raised by the petitioners are strong enough for allowing the writ petition by interdicting the impugned order. According to him, so far as competence and lack of jurisdiction of the Additional Commissioner is concerned, the same is unsustainable for the reason that a plain reading of the provision of specifically holds that a "Joint Commissioner" means a person appointed to be a "Joint Commissioner" and can also be an "Additional Commissioner". Thus, the proceedings under could have been issued either by a Joint Commissioner or by an Additional Commissioner both of whom are almost of the same Rank officers. Likewise, it was also the contention of the learned counsel for the respondents that as regards the ground of absence of satisfaction in the assessment order 2 2022 SCC Online TS 3568 3 2024 SCC Online AP 5814 4 2025 SCC Online SC 2562 5 (2006) 12 SCC 33 6 (2010) 13 SCC 427 Page 12 of 27 so far as violation of is concerned, that again is not something which is mandatorily required. It was also the contention of the learned counsel for the respondents that neither nor refers to requirement of a satisfactory finding for initiating proceedings under or under . Therefore, that which is not provided under the statute cannot be said to be a mandatory requirement.

17. In support of his contentions, learned counsel for the respondents relied on the following decisions, viz., (7, (8, (9 , (iv) Grihalakshmi vision vs. Additional Commissioner of Income-Tax 10 , and (v) Diastar Jewelry Private Limited vs. Additional Commissioner of Income Tax, Range B(1) 11.

18. Having heard the contentions put forth on either side, we proceed to decide the preliminary objection first and thereafter we would go on to decide the other grounds.

7 (2004) 271 ITR 223 8 (2006) 285 ITR 179 9 (2011) 331 ITR 116 10 (2015) 379 ITR 100 11 I.T.A.No.139/Mum/2012, dated 03.08.2016, Income Tax Appellate Tribunal, "D" Bench, at Mumbai Page 13 of 27

19. The preliminary objection raised by the petitioners pertains to the competence of the Additional Commissioner, whether he is competent to pass an order of penalty under of the Act. To put it differently, the question of law is whether the Additional Commissioner lacks jurisdiction for passing an order of penalty under of the Act.

20. In the initial paragraphs, has been extracted for ready reference. Sub-Section (2) of specifically envisages that the order of penalty has to be passed only by the "Joint Commissioner". This in other words would mean that framers of the law, when the law was enacted, had taken a very categorical stand that in a proceeding under , an order of penalty, if at all it has to be imposed, has to be passed by the Joint Commissioner.

21. , provides for definition and Sub- of Section 28C which stood inserted under the in the 1998 defines the words "Joint Commissioner". For ready reference, the definition of "Joint Commissioner" as defined in Sub- of of the Act, is extracted hereunder, viz., [(28C) "Joint Commissioner" means a person appointed to be a Joint Commissioner of Income-tax or an Additional Commissioner of Income-tax under sub-section (1) of] Page 14 of 27

22. The hierarchy of the Income Tax Authorities is that which is prescribed under of the Act. Likewise, the appointment of Income Tax Authorities is done under of the Act. Sub- of of the Act prescribes that the Central Government may, as it thinks fit, appoint such persons as Income Tax Authorities. For ready reference, Sub- of of the Act is reproduced hereunder, viz., Appointment of income-tax authorities.

117. (1) The Central Government may appoint such persons as it thinks fit to be income-tax authorities.

23. of the Act provides for the jurisdiction of the Income Tax Authorities. Sub-Section (1) and the explanation to Sub-Section (1) of of the Act envisages that the authorities under the shall exercise all or any of the powers, as the case may be, assigned to such authorities under the Act. For ready reference, Sub-Section (1) and its explanation to of the Act are again reproduced hereunder, viz., Jurisdiction of income-tax authorities.

120. (1) Income-tax authorities shall exercise all or any of the powers and perform all or any of the functions conferred on, or, as the case may be, assigned to such authorities by or under this Act in accordance with such directions as the Board may issue for the exercise of the powers and performance of the functions by all or any of those authorities.

Page 15 of 27 (2) The directions of the Board under sub-section (1) may authorise any other income-tax authority to issue orders in writing for the exercise of the powers and performance of the functions by all or any of the other income-tax authorities who are subordinate to it. [Explanation--For the removal of doubts, it is hereby declared that any income-tax authority, being an authority higher in rank, may, if so directed by the Board, exercise the powers and perform the functions of the income-tax authority lower in rank and any such direction issued by the Board shall be deemed to be a direction issued under sub-section (1).]

24. A plain reading of and its Sub-Section along with of the Act makes it evidently clear that for any authorized officer under the Act, in order to exercise the power conferred under a particular provision of the in addition to the fact that the prescribed officer, there needs to be a specific authorization or an order specifically to that effect. It is here that of the Act makes thinks explicit. of the Act defines "Joint Commissioner" and it also indicates that in a given case it can also be the "Additional Commissioner" of Income Tax, provided he is appointed under Sub-Section (1) of of the Act for exercising the powers which he otherwise intends to; but for which the statute has prescribed "Joint Commissioner" to be the competent officer. Page 16 of 27

25. In the instant case, though the stand of the learned Senior Standing Counsel for the Income Tax Department, appearing for the respondents, is that "Joint Commissioner" and "Additional Commissioner" are same level officers and that whenever a Joint Commissioner

completes four years of service as Joint Commissioner, he becomes entitled to be an Additional Commissioner and he is also entitled to discharge the duties of Additional Commissioner. However, the said contention of the learned Senior Standing Counsel, appearing for the respondents, may not be sustainable when we read Sub- along with read with and the explanation thereto. In the instant case, it is also not the case where the Additional Commissioner who had passed the impugned penalty order was an officer who had completed four years as "Joint Commissioner". It is a case where the same Additional Commissioner when he was a Joint Commissioner, had initiated proceedings under of the Act. Thereafter, the said person got promoted as Additional Commissioner and assumed duties of the post of Additional Commissioner. But he retained the files in respect of petitioners those which he was dealing in the capacity of Joint Commissioner, and proceeded further and passed the impugned order. Undoubtedly, once when the officer gets promoted as Additional Commissioner he ceases to be a Joint Commissioner any further. He also ceases to have the Page 17 of 27 powers which would otherwise be exercised only by a Joint Commissioner. If at all if he could have also exercised the powers which are otherwise conferred upon the Joint Commissioner, there was a necessity to have a specific order in this regard under of the Act which is also envisaged under of the Act and the explanation thereto. This aspect is critically missing from the facts of the present case. In the absence of which, this Bench has no hesitation in reaching to the conclusion that the impugned order passed by the Additional Commissioner was lacking jurisdiction under of the Act, and therefore, the impugned order was unsustainable in law. The impugned order of penalty therefore was untenable and the same deserves to be interdicted on this ground. Therefore, the preliminary objection raised by the petitioner stands allowed accordingly in favour of petitioner by holding that the Additional Commissioner was not having the competence and jurisdiction to passed the impugned order under of the Act.

26. Another ground raised by the petitioner was in respect of the assessment order for all the assessment years not having a satisfaction note of the Assessing Officer insofar as violation of and the necessity for initiation of penalty proceedings. The Assessment Order for the Assessment Year 2001-02 as also the Page 18 of 27 Assessment Order for the period 2005-06 carried a one-liner on the part of the Assessing Officer stating that penalty proceedings under of the Act are to be initiated separately. The other assessment orders are totally silent in respect of initiation of any penal proceedings. One thing is clear that in none of the assessment orders there is a finding of blatant violation of of the Act. Likewise, in none of the Assessment Orders is there any satisfactory note in respect of the said violation under and in none of the Assessment orders the Assessing Officer had made a reference of requirement of initiation of initiation of proceedings for violation of and penal proceedings under .

27. In this way, it would be relevant at this juncture to take note of decision of the Hon'ble Supreme Court in the case of , wherein the learned Division Bench of the Hon'ble Supreme Court held, in a proceedings under of the Act, at paragraphs Nos.4 to 6 as under, viz., "4. After remand, the assessing officer passed fresh assessment order. In this assessment order, however, no satisfaction regarding initiation of penalty proceedings under of the Act was recorded. It so happened that on the basis of the original assessment order dated 26-2-1996, show-cause notice was given to the assessee and it resulted in passing the penalty order 12 (2016) 16 SCC 673 Page 19 of 27 dated 23-9-1996. Thus, this penalty order was passed before the appeal of the assessee against the original assessment order was heard and allowed thereby setting aside the assessment order itself. It is in this backdrop, a question has arisen as to whether the penalty order, which was passed on the basis of original assessment order and when that assessment order had been set aside, could still survive.

5. The Tribunal as well as the High Court has held that it could not be so for the simple reason that when the original assessment order itself was set aside, the satisfaction recorded therein for the purpose of initiation of the penalty proceeding under would also not survive. This according to us is the correct proposition of law stated by the High Court in the impugned order.

6. As pointed out above, insofar as, fresh assessment order is concerned, there was no satisfaction recorded regarding penalty proceeding under of the Act, though in that order the assessing officer wanted penalty proceeding to be initiated under of the Act. Thus, insofar as penalty under is concerned, it was without any satisfaction and, therefore, no such penalty could be levied."

28. The aforesaid decision of the Hon'ble Supreme Court has further been relied upon by a learned Division Bench of this Court in 13, wherein it was held at paragraph Nos.13, 21, 22, 23, 24, 26 and 27 as under, viz., "13. Issue raised in the writ petition is whether without satisfaction being recorded in the assessment order, penalty can be levied by the Jt. CIT under of the Act? 13 (2023) 332 CTR 614 Page 20 of 27 ....

21. From an analysis of and of the Act, it is seen that both the provisions are pari materia to each other. While of the Act would be attracted on a person accepting loan or deposit or specified sum in contravention of of the Act, penalty under of the Act would be imposable on a person who makes or repays the loan or deposit or specified advance in contravention of . Therefore, in a way, the two provisions are complimentary to each other.

22. In (supra), the Hon'ble Supreme Court considered the question as to whether penalty proceedings under of the Act is independent of the assessment proceeding? In the facts of that case, it was found that the penalty order was issued following the assessment order. However in appeal, CIT(A) had set aside the original assessment order with a direction to frame assessment de novo. In the fresh assessment order, no satisfaction was recorded by the AO regarding initiation of penalty proceedings under of the Act. It was noticed that the penalty order was passed before the appeal of the assessee was allowed by the CIT(A). It was in that context that Supreme Court held as follows: