

No provisions in Benami law for cross-examination of witnesses by assessee in preliminary stage: HC

Facts of the case - Marg Projects and Infrastructure Ltd. v. Deputy Commissioner of Income-tax - [2023] (Madras)

Assessee-company was engaged in the business of real estate and developing infrastructure projects including ports, SEZ's, hotels, malls, etc. A search was conducted in the business premises of the assessee.

After search, a notice under section 24 was issued under the Prohibition of Benami Property Transactions Act, 1988 considering the assessee as a benamidar of shares held by it. In response, the assessee furnished the required documents. Not satisfied with the response and without providing any opportunity for the assessee to cross-examine the witnesses, the Deputy Commissioner attached the assessee's property.

Considering such an act as a violation of the principles of natural justice, the assessee preferred a writ petition to the Madras High Court.

Decision of the case :

- The High Court held that the applicability of the principles of natural justice and fair play depends on the facts and circumstances of each case and is subjected to statutory provisions. The commissioner issued notices to the assessee containing reasons for forming an opinion wherein the assessee was allowed to furnish the documents to prove the genuineness of the transactions. However, the assessee failed to produce the documents called for and thus it couldn't be said that there was no fair play on the part of the commissioner.
- Section 24 of the Benami Act only requires forming a prima facie opinion to consider any transaction in the nature of Benami. After making all the enquiries and considering all the documents furnished by the assessee, with the prior approval of the Approving Authority, an attachment order was passed. There is no provision to cross-examine the witnesses and provide the opportunity of being heard to the assessee at the preliminary stage under the Benami Act.
- It is to be pointed out that the exercise of cross-examination commences only after the proceedings for adjudication have commenced and thus a writ petition should not be entertained against a mere show cause notice.
- Therefore, the commissioner's act was purely provision in nature and the plea raised by the assessee cannot be countenanced.