IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :25.06.2019

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THE HON'BLE MR.JUSTICE M.SUNDAR

W.P.Nos.1889 & 1897 of 2019
and
W.M.P.Nos.2088, 2092, 2095, 2100, 2101 and 2103 of 2019
and
W.M.P.No.7163 & 7165 of 2019

M/s.Infodrive Software Ltd.,
Represented by its Director,
Andrew Niranjan Seshiah
No.10/44, Thomas Nagar, Little Mount,
Saidapet, Chennai - 600 015. ..Petitioner in both W.Ps

vs

Deputy Commissioner of Income Tax
International Taxation - I(2)
Chennai - 600 006 ..Respondent in both W.Ps

Prayer in W.P.No.1889 of 2019: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records of the Respondent contained in its order dated 31.12.2018 passed under Section 201(1)/201(1A) r/w Section 254 of the Income Tax Act, 1961, in respect of assessment year 2011-12 for PAN No.AAACI9430R and to quash the same as arbitrary, illegal and unconstitutional and to consequently direct the case to the Respondent for a fresh order to be passed in accordance with law, and pass such further or other orders as the Court may deem fit in the interest of justice.

Prayer in W.P.No.1897 of 2019: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records of the Respondent contained in its order dated 31.12.2018 passed under Section 201(1)/201(1A) r/w Section 254 of the Income Tax Act, 1961, in respect of assessment year 2010-11 for PAN No.AAACI9430R and to quash the same as arbitrary, illegal and unconstitutional and to consequently direct the case to the Respondent for a fresh order to be passed in accordance with law, and pass such further or other orders as the Court may deem fit in the interest of justice.

For Petitioner : Mr.Suhrith Parthasarathy
(in both W.Ps)

For Respondent : Ms.Hema Muralikrishnan
Senior standing counsel(Income Tax)
(in both W.Ps)

COMMON ORDER

This common order will dispose of these two writ petitions.

2. Mr.Suhrith Parthasarathy, learned counsel on record for the writ petitioner in both these writ petitions and Ms.Hema Muralikrishnan, learned Senior standing counsel (IT) on behalf of the lone official respondent in both these writ petitions are before this Court. Counter affidavits have been filed, common rejoinder has also been filed and pleadings are complete.

3. Main writ petitions are heard out.

4. Though there are elaborate pleadings, learned counsel on both sides confined their submissions to a very limited aspect of the matter namely personal hearing to be afforded to the writ petitioner post remand to the Assessing officer made by the 'Income Tax Appellate Tribunal' ['ITAT' for the sake of brevity].

5. These two writ petitions pertain to two assessment years namely 2010-11 and 2011-12, hereinafter 'said AYs' in plural and said 'AY' in singular for the sake of brevity. With regard to the said AYs, writ petitioner was aggrieved by the assessment made the Assessing officer and the writ petitioner carried the matter to ITAT via a statutory appeal to the Commissioner (Appeals). The matter culminated in ITAT by way of two statutory appeals namely ITA Nos.397 and 398 of 2014.

6. After full contest, i.e., after hearing both sides, ITAT passed a common order in the aforesaid two ITAs pertaining to said AYs and this common order is dated 30.06.2017.

7. Considering the narrow compass on which, the instant writ petitions now turn, suffice to say that ITAT remanded the matter back to the Assessing officer(Respondent in these writ petitions) with a direction to issue definite findings after giving reasonable opportunity to the assessee i.e., the writ petitioner in these two writ petitions before this Court.

8. Referring to the ITAT order, learned counsel for writ petitioner submitted that reasonable opportunity has not been given to the writ petitioner and notwithstanding the pleadings

in the affidavits filed in support of these writ petitions as well as the rejoinder, learned counsel, as mentioned supra, confined and abridged his submissions to this one aspect of the matter.

9. To demonstrate that adequate opportunity has not been given to the writ petitioner, learned counsel submitted that after the aforesaid order dated 30.06.2017 made by ITAT, the writ petitioner sent a communication dated 07.09.2018 to the 1st respondent. This communication is referred to only for the limited purpose of showing that the office address of the writ petitioner is in Saidapet, Chennai-600 015, India. To be precise, the name of the writ petitioner and the address reads as follows:

'Info-Drive Software Limited
No.10/44, Thomas Nagar, Little Mount,
Saidapet, Chennai - 600 015, India
www.infodriveservices.com'

10. Thereafter, the sole respondent, sent a communication dated 27.12.2018 to the writ petitioner, calling upon the writ petitioner to submit, the order of the ITAT by 11.00 am on 31.12.2018. To be noted, 27.12.2018 falls on a Thursday. This communication was received by the writ petitioner on 29.12.2018 (Saturday) and the ultimatum is 11.00 am on 31.12.2018 (Monday). In other words, there was only one day between the date of the receipt of the communication and the 11.00 am ultimatum on 31.12.2018 (Monday) and that one day i.e., 30.12.2018, falls on Sunday. Highlighting this position, writ petitioner sent an Electronic Mail dated 30.12.2018. After highlighting the aforesaid position, writ petitioner vide this E-mail, requested the 1st respondent to provide a reasonable opportunity by rescheduling timeline qua the letter dated 27.12.2018, but admittedly that did not happen.

11. The aforesaid chronicle reveals that adequate opportunity has obviously not been given to the writ petitioner. Considering the chronicle and the same being alluded to supra, no elaboration is required to say that the aforesaid communication will certainly not qualify as opportunity, much less adequate opportunity.

12. Responding to the aforesaid submission of the learned counsel for writ petitioner, learned Revenue counsel submitted that notices were sent prior to 27.12.2018 and the same did not evoke any response or reply from the writ petitioner. In other words, learned Revenue counsel says that 27.12.2018 is not the lone communication pertaining to personal hearing and that there have been earlier communications, which did not evoke any response or reply from the writ petitioner.

13. Learned Revenue counsel submitted that this has been articulated with clarity and specificity in Sub paragraph (iv) of paragraph 3 of the counter affidavit and the same reads as follows:

> '3. (iv) As directed by the Tribunal, the Petitioner was issued notice on 06.11.2017, posting the case for hearing on 14.11.2017 with a request to furnish all the relevant details. As there was no response to the said notice, efforts were made to serve notice through the Inspector of Income Tax on the latest address available as per return of income filed by the Petitioner for the assessment year 2017-18. However, the attempt did not succeed, as the Respondent had given its address in the return of income for the assessment year 2017-18 as "Office No.3, No.128, Sixth Floor, Crown Court, Cathedral road, Andaman and Nicobar Islands, India", a wrong address. Although the address was purposely mentioned as Andaman and Nicobar Islands, the Inspector of Income tax verified the address stated at Cathedral Road in Chennai as well and reported that the Petitioner was not available at that address. Therefore the Respondent had to send the above notice by mail to id: info@infodriveservices.com, printed on the letter head of the Petitioner on 24.12.2018, to furnish all the relevant details in support of its claim. As there was no response to this mail, the Respondent had issued show cause letter dated 27.12.2018 at No.10/44, Thomas Nagar, Little Mount, Saidapet, Chennai – 600 015, posting the case for hearing on 31.12.2018, to show cause why the assessment should not be completed following the same line of the order u/s 201(1)/201(1A) of the Act dated 15.12.2011. In response thereto, the Petitioner vide letter dt.30.12.2018 sought four weeks time to submit the details called for. Hence the Respondent was constrained to pass an order u/s 201(1)/201(1A) of the Act on 31.12.2018 for the A.Y.2011-12 determining the tax and interest of Rs.1,48,44,712/- and Rs.16,70,335/- respectively, totalling to Rs.1,65,15,087/- as the set aside order was getting barred by limitation on 31.12.2018 as per the provisions of section 153(3) of the Act.'

14. A perusal of the aforesaid articulation and the counter affidavit as well as the contents of the aforesaid communication dated 27.12.2018 reveals that the respondents have in fact sent a communications prior to 27.12.2018. However, the address has been shown as Office No.3, No.128, Sixth Floor, Crown Court, Cathedral road, Andaman and Nicobar Islands, India.

15. Learned counsel for writ petitioner submits that at the time of filing online returns, while choosing 'Tamil Nadu', 'Andaman and Nicobar Islands', which figure one after the other, Tamil Nadu being the last in alphabetical order in the list and Andaman and Nicobar Islands being the first in the list. Therefore, an error had occurred is learned writ petitioner counsel's say. It is so obvious that this is an error, as even according to the counter affidavits and more particularly, paragraph 3(iv), which has been extracted supra and the address reads as Cathedral Road, but says Andaman and Nicobar Islands, India.

16. In the aforesaid backdrop, the communications said to have been sent prior to 27.12.2018 can safely be ignored, more so in the light of writ petitioner's affirmation that they had not received those communications. This leaves us with the communication dated 27.12.2018 and as alluded to supra by this Court elsewhere in this order, that communication is certainly not an opportunity to the writ petitioner much less an adequate opportunity.

17. Therefore, the following common order is passed:

(a) Impugned assessment order dated 31.12.2018 passed under Section 201(1)/201(1A) r/w Section 254 of the Income Tax Act, 1961, in respect of assessment year 2011-12 for PAN No.AAACI9430R and the impugned assessment order dated 31.12.2018 passed under Section 201(1)/201(1A) r/w Section 254 of the Income Tax Act, 1961, in respect of assessment year 2010-11 for PAN No.AAACI9430R are set aside. To be noted, these impugned orders are set aside only on the ground of adequate opportunity / personal hearing not been granted to the writ petitioner. In other words, this Court does not express any opinion or view on the merits of the matter.

(b) By consent of both sides, personal hearing is now fixed on 10.07.2019 at 12.00 Noon and the venue, shall be the office of the sole respondent.

(c) The writ petitioner undertakes to avail the personal hearing on the aforesaid date, time and venue and produce documents.

d) On the personal hearing being so availed in the aforesaid manner, the respondent shall embark upon the exercise of returning findings in accordance with the common order of ITAT dated 30.06.2017 made in ITA Nos.397 & 398 of 2014, as expeditiously as possible.

18. These two writ petitions are disposed of with the aforesaid directions. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

Deputy Commissioner of Income Tax
International Taxation - I(2)
Chennai - 600 006

+1cc to Mr.Arun Karhik Mohan, Advocate, S.R.No. 52915
+1cc to Mr.Hema Muralikrishnan, Advocate, S.R.No. 52498

W.P.Nos.1889 & 1897 of 2019
and
W.M.P.Nos.2088, 2092, 2095, 2100,
2101 and 2103 of 2019
and
W.M.P.No.7163 & 7165 of 2019

BS(CO)
GN(24/07/2019)