IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.03.2019

CORAM

THE HON'BLE Dr. JUSTICE ANITA SUMANTH

W.P.No.9201 of 2019
and
W.M.P.Nos.9749, 9751, 9753 and 9756 of 2019

M/s.Oasys Cybernetics Private Limited,
Represented by its authorised signatory,
Mr.E.Venkatakrishnaiah,
Having Office at
No.99, M.N.Complex, II Floor,
Greams Road, Chennai - 600 006. ...Petitioner

--Vs--

Assistant Commissioner of Income Tax,
Corporate Circle 5(1),
No.121, Mahatma Gandhi Road,
Nungambakkam, Chennai - 600 034. ...Respondent

PRAYER in WP: Writ Petitions filed under Article 226 of the Constitution of India praying for a writ of Certiorarified Mandamus to call for the records of the respondent contained in its order bearing reference no.ACIT/CC-5(1)/2018-19, dated 18.03.2019 with respect to PAN: AACCO2848M in respect of AY 2016-17 and quash the same as arbitrary, illegal and unjust and to consequently direct the Respondents or any of their subordinates, agents, representatives or any other person claiming under/through the Respondents to refrain from in any manner seeking to enforce and/or initiate recovery proceedings pursuant to the Respondent's Notice of Demand bearing No.ITBA/AST/S/156/2018-19/1014633458(1) dated 28.12.2018 for PAN: AACCO2848M in respect of AY 2016-17.

For Petitioner: Mr.Suhrith Parthasarathy

For Respondent: Mrs.Hema Muralikrishnan
Standing counsel

O R D E R

This Writ Petition has been filed challenging the order of the respondent dated 18.03.2019 in reference No.ACIT/CC-5(1)/2018-19 with respect to PAN: AACCO2848M in respect of AY 2016-17 and to quash the same and to consequently direct the Respondent to refrain from in any manner seeking to enforce and/or initiate recovery proceedings pursuant to the Respondent's Notice of Demand bearing No.ITBA/AST/S/156/2018-19/1014633458(1) dated 28.12.2018 for PAN: AACCO2848M in respect of AY 2016-17.

2. The Writ Petitioner in W.P.No.4310 of 2019 is again before me in the present Writ Petition, challenging an order dated 18.03.2019, rejecting the stay petition passed in respect of the disputed demand for the Assessment Year 2016-2017. Writ Petition No.4310 of 2019 was disposed of on 08.03.2019, directing the petitioner to appear before the Assessing Officer on 15.03.2019 at 2.30 P.M. and directing the officer to thereafter pass appropriate orders in the application for stay after hearing the petitioner and considering the materials placed by it in support of the request for stay, within a period of two weeks thereafter i.e, on or before 29.03.2019.

3. While this is so, the Petitioner has now come up with the present writ petition contending that the Assessing Officer has passed the impugned order on 18.03.2019, even without hearing it, as specifically directed by this Court in W.P.No.4310 of 2019 on 08.03.2019. The impugned order reads as follows:

> "Your stay petition dated 11.01.2019 has been carefully been reconsidered as per the directions of the Hon'ble High Court.
>
> You were given notice u/s. 143 (2) because the case had got selected for scrutiny on 22.06.2017 for which you had asked for adjournment. Subsequently, on 18/07/2018, notice u/s.142(1) was issued to you asking for details pertaining to the assessment for which there was no response.
>
> This irresponsiveness continued and there was no response for another reminder on 03/08/2018.
>
> Further notice was sent on 29/10/2018 for which you furnished basic particulars and not

specific details as required in the notice u/s.142(1) dated 29/10/2018.

A show-cause notice was sent on 19/11/2018 asking you to furnish the details as specified in the questionnaire dated 29/10/2018 for which there was no response.

A final show-cause notice was sent on 27/11/2018 fixing final hearing on 30/11/2018 as the case was getting time barred, where it was specified that any failure will constrain the office to complete the assessment based on a available records.

On 26/12/2018, a final show-cause notice was issued to you, where it was made clear that non complaince on 27/12/2018, would result in completion of assessment based on estimate basis at income being taken as 8% of Sales Turnover i.e at Rs.23,94,81,675/-.

Since there was non compliance on 27/11/2018 and since the case was getting time barred on 31/12/2018, the assessment was completed on 28/12/2018, estimating the income at 8% of total turnover. "

It is a common practice in Income Tax proceedings to estimate the income at 8% of gross receipts in absence of submissions from the assessee. Therefore, your contention that the demand of Rs.23,94,81,675/- has been raised without basis is incorrect.

The instructions of CBDT through circulars no.96 dated 21/08/1969 and CBDT instructions no.1914 of 1993 is over ridden by partial modifications of instruction no.1914 of 1996 for stay of demand on payment of 20% of the disputed demand. Therefore, you are require to remit 20% of the disputed demand as you have gone on appeal in order to get a stay on collection of the demand. The case laws quoted by you do not apply for this case because the addition is based on estimate basis because of your failure to submit particulars during the course of assessment. Hence, your contention that the assessment fails to accord any reasons/basis for adding 8% of the gross receipts to our total income does not hold good.

Your stay petition is therefore rejected and disposed off accordingly."

4. Prima facie, the order is reasonably speaking and I am not inclined to interfere in it at all, except for the fact that there is no reference therein to having heard the petitioner as per the directions of this Court. This assumes significance in the light of the specific averment of the petitioner in the affidavit as well as orally made before me to the fact that the petitioner had appeared before the Assessing Authority on 15.03.2019, at 2.30 P.M. as directed and waited till 4.30 P.M. Since it was informed that the Assessing Officer was not in office, the petitioner submitted a letter dated 15.03.2019 narrating the aforesaid facts, along with a written submission received and acknowledged by the respondent. The said letter and written submission with seal of acknowledgement is produced before the Court.

5. Since the impugned order does not specifically refer to the factum of appearance or otherwise by the petitioner I am constrained to set aside the present order and direct the Assessing officer to grant one more opportunity of hearing to the petitioner. Accordingly, the petitioner will appear before the Assessing Officer on 01.04.2019 at 10.30 A.M. and after hearing the petitioner, orders will be passed on the said application, in accordance with law.

6. This Writ Petition is disposed of with the above directions. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

arr/tsg

To

Assistant Commissioner of Income Tax,
Corporate Circle 5(1),
No.121, Mahatma Gandhi Road,
Nungambakkam,
Chennai - 600 034.

+1 cc to M/s.Hema Muralikrishnan, Advocate Sr.No.30716
+1 cc to M/s.Arun karthik Mohan, Advocate Sr.No.30419

W.P.No.9201 of 2019 and
W.M.P.Nos.9749, 9751, 9753 and 9756 of 2019

SSV(CO)
CSL/27.05.2019