HONOURABLE SRI JUSTICE SANJAY KUMAR
AND
HONOURABLE SRI JUSTICE P.KESHAVA RAO

WRIT PETITION NO.7896 OF 2019

ORDER
(Per Sanjay Kumar, J)

1. The petitioner company seeks a writ of mandamus to the Income Tax Authorities to restore its objections in relation to the draft assessment order for the A.Y.2015-16 as they were filed within the statutory timeline of thirty days from the date of receipt of the said draft assessment order. As a consequence, it prays for setting aside of the final assessment order passed by the Assistant Commissioner of Income Tax, Circle-1(1), Hyderabad, for the A.Y.2015-16.

2. In the affidavit filed in support of the writ petition, the authorized signatory of the petitioner company stated that they received the draft assessment order passed under Section 143(3) read with Section 92CA(3) of the Income Tax Act, 1961 (*for brevity*, 'the Act of 1961'), on 27.12.2018 and the petitioner company filed its objections thereto before the Dispute Resolution Panel-1, Bangalore, on 24.01.2019, and before the Assistant Commissioner of Income-Tax, Circle-1(1), Hyderabad, the Assessing Officer, on 25.01.2019, well within the statutory timeline of thirty days. It also addressed letter dated 07.01.2019 to the Assessing Officer stating the fact that it had received the draft assessment order only on 27.12.2018 and was thinking of filing its objections against the same before the Dispute Resolution Panel-1, Bangalore.

3. The Income Tax authorities however proceeded on the ground that the draft assessment order was received by the petitioner company on 17.12.2018 and rejected its objections. This led to passing of the final assessment order dated 27.02.2019, raising a demand of

Rs.31,13,71,207/-. The Dispute Resolution Panel-1, Bangalore, also passed an order to the same effect holding that the petitioner company had not filed its objections within time.

4. We may note that Section 144C of the Act of 1961 provides for forwarding of the draft assessment order to the assessee so that he could, within thirty days from the date of receipt thereof, file objections before the Dispute Resolution Panel and the Assessing Officer as to the variation sought to be made by the Assessing Officer to the income or loss returned. Section 144C (5) requires the Dispute Resolution Panel, before which objections are filed by the assessee, to consider the same and issue such directions as it thinks fit for the guidance of the Assessing Officer to complete the assessment. In terms of CBDT Circular No.5 of 2010 dated 03.06.2010 (Para No.45.4), it is the choice of the assessee whether to file objections against the draft assessment order before the Dispute Resolution Panel or adopt the normal channel of filing an appeal. The Circular further provides that in case the assessee exercises the option of filing objections against the draft assessment order before the Dispute Resolution Panel, it cannot withdraw such objections and thereafter opt for the normal channel of filing an appeal.

5. In the light of the aforestated scheme, the date of filing of the objections by the petitioner company assumes great importance, inasmuch as its statutory right of filing an appeal stood extinguished. According to the petitioner company, it received the draft assessment order only on 27.12.2018 and its objections before the Dispute Resolution Panel-1 at Bangalore were filed well within time. The objections would however be beyond the stipulated thirty days if the draft assessment order was received by the petitioner company on 17.12.2018.

6. The Deputy Commissioner of Income Tax, Circle-1(1), Hyderabad, filed a counter-affidavit asserting that the draft assessment order was received by the petitioner company on 17.12.2018. He filed a copy of the data received from the postal authorities in support of this assertion.

7. The authorized signatory of the petitioner company thereupon filed a reply denying the assertion of the Deputy Commissioner that it had received the draft assessment order on 17.12.2018. Therewith, the authorized signatory also filed the information collected from the postal authorities with regard to service of the said draft assessment order.

8. When this Court took up the matter for hearing on 31.07.2019, we noticed that there was a discrepancy in the documents filed by the Deputy Commissioner and the petitioner company, inasmuch as the date 17.12.2018 was added in the postal data furnished to the petitioner company but the same did not find mention in the postal data given to the Income Tax Authorities. That apart, the case of the petitioner company was that the other two consignments which were mentioned in the postal data along with the consignment pertaining to the draft assessment order were received on 27.12.2018 and therefore, it was not possible that the third consignment alone would have been served on 17.12.2018.

9. We therefore directed Sri K.Raji Reddy, learned senior standing counsel for the revenue, to get instructions as to the discrepancy with regard to the date of delivery of the draft assessment order upon the petitioner company. Thereupon, the Deputy Commissioner of Income Tax, Circle-1(1), Hyderabad, addressed letter dated 02.08.2019 to the learned counsel, wherein he stated that the Senior Superintendent of Post Offices, Secunderabad Division, was asked to give a clarification once again as to when the draft assessment order was actually delivered upon the

petitioner company. By letter dated 02.08.2019, the Senior Superintendent replied that the delivery date was erroneously communicated earlier as 17.12.2018 and that the article was actually delivered on 27.12.2018. The letter dated 02.08.2019 received from the Senior Superintendent of Post Offices, Secunderabad, is placed on record.

10. In the light of this admitted fact that the draft assessment order was served upon the petitioner company only on 27.12.2018, the objections filed by it on 24/25.01.2019 were well within time. The action of the Assessing Officer in proceeding with the final assessment on the ground that the said objections were filed beyond time and the action of the Dispute Resolution Panel in rejecting the said objections, on the same ground, therefore cannot be countenanced.

11. The writ petition is accordingly allowed setting aside the final assessment order dated 27.02.2019 passed by the Assistant Commissioner of Income Tax, Circle-1(1), Hyderabad. The Dispute Resolution Panel-1, Bangalore, shall consider the objections of the petitioner company submitted on 24.01.2019 as per Section 144C(5) and (6) of the Act of 1961 and issue necessary directions to the Assessing Officer to complete the assessment of the petitioner company for the A.Y.2015-16. Pending miscellaneous petitions, if any, shall stand closed in the light of this final order. No order as to costs.

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JUSTICE SANJAY KUMAR

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JUSTICE P.KESHAVA RAO

20th AUGUST, 2019
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