BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 02.12.2020

CORAM

THE HONOURABLE MR.JUSTICE **ABDUL QUDDHOSE**

W.P.(MD)No.2897 of 2020

and

W.M.P.(MD)Nos.2445 and 2446 of 2020

Oasys Green Tech Private Limited,
7, Allisalai, Annamalai Nagar,
Thiruchirapalli- 620 018. : Petitioner

Vs.

1.The Income Tax Officer,
Ward 3(2), 4th Floor, Main Building,
Williams Road, Contonment,
Thiruchirapalli-620 015.

2.The Income Tax Officer,
Ward 1(2), 4th Floor, Williams Road, Contonment,
Thiruchirapalli-620 015. : Respondents

PRAYER:- Petition filed under Article 226 of the Constitution of India seeking a Writ of Certiorari calling for the records of the respondents contained in its assessment order bearing Letter No.ITBA/COM/F/17/2019-20/1023538193(1), dated 31.12.2019 passed under Section 144 r/w Section 147 of the Income Tax Act, 1961 for PAN:AAFCK6406Q in AY-2012-13 and to quash the same as arbitrary, unjust and illegal.

For Petitioner :Mr.Suhrith Parthasarathy
for Mr.Arun Karthick Mohan

For Respondents :Mr.N.Dilip Kumar

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ORDER

(This petition was heard through the Video Conferencing)

This Writ Petition has been filed challenging the assessment order, dated 31.12.2019 passed under Section 144 r/w Section 147 of the Income Tax Act, 1961, for the assessment year 2012-13.

2.Heard Mr.Suhrith Parthasarathy, learned Counsel for Mr.Arun Karthick Mohan, learned Counsel for the petitioner and Mr.N.Dilip Kumar, learned Counsel for the respondents.

3.The primary ground for challenge to the impugned assessment order is that the petitioner was not given any opportunity to seek the reasons for reopening the assessment or submit his objections to the reopening of the assessment in accordance with the principles laid down by Honourable Supreme Court in the case of ***GKN Driveshafts vs. Income Tax Officer***, reported in ***(2003) 1 SCC 72,*** for reopening of assessment. According to the petitioner, the respondents have wrongly stated in the assessment order that "the assessee has not even attempted to file a return stating that the e-portal system shown an error not allowing to file the return of income".

4.It is the case of the petitioner that they have taken all efforts to upload the return of income for the assessment year 2012-13 in the manner suggested by the respondents in its own letter, dated 29.11.2019. It is also the case of the petitioner that the e-portal system maintained by the respondents does not permit a company, which has been amalgamated with another company, to file their returns electronically. It is the case of the petitioner that they cannot file the returns on behalf of the company, namely, M/s.OAS Digital Infrastructure Private Limited, which has been merged with the petitioner under an amalgamation order passed by the Madras High Court. In such circumstances, on the ground of violation of principles of natural justice by the respondents while passing the impugned assessment order and on the ground that the impugned assessment order has been passed without authority under law, the present Writ Petition has been filed.

5.A counter has been filed by the respondents denying the allegations of the petitioner. According to them, though several opportunities were granted to the petitioner to file the returns, the petitioner has not filed the returns in the proceedings initiated under Section 147 of the Income Tax Act, 1961, for reopening of assessment. It is also their contention that at no point of time, the petitioner had requested the respondents to file the returns manually.

6.It is also the contention of the respondents, as seen from the counter affidavit that even prior to the merger with the petitioner's company, M/s.OAS Digital Infrastructure Private Limited, never filed their returns with the respondents. According to the respondents, since the petitioner did not file any return of income, they are not entitled for any indulgence by this Court. The respondents have passed the impugned assessment order against the petitioner on the ground that M/s.OAS Digital Infrastructure Private Limited, received payments under various Sections of the Income Tax Act, 1961, as detailed hereunder:

"a.Contract receipts under Section 194C- Rs.1,61,50,354/-

b.Professional receipts under Section 194J- Rs.23,76,976/- and

c.Interest receipts under Section 194J-Rs.5,040/- totalling to the tune of Rs.1,85,32,370/- which had escaped assessment.

d.That apart there was an unexplained cash deposit to the tune of Rs.12,59,140/- during the period from 01.04.2011 to 31.03.2012."

7.According to them, they have not violated the principles of natural justice and they have granted sufficient opportunity to the petitioner to file their returns in the reopening of assessment proceedings and therefore, principles of natural justice has not been violated under the impugned assessment order.

8.It is not in dispute that there is no provision for filing of the income tax returns electronically under the e-portal system maintained by the respondents in respect of a company, which has been merged with another company pursuant to an amalgamation order passed by a Court. The respondents have reopened the assessment under Section 147 of the Income Tax Act, 1961, on the ground that M/s.OAS Digital Infrastructure Private Limited, has suppressed certain incomes before their merger with the petitioner company on 01.02.2015.

9.It is settled law that the petitioner should be given sufficient opportunity and fair hearing to raise all objections available to them under law with regard to the reopening of any assessment. The learned Counsel for the petitioner drew the attention of this Court to the attempts made by the petitioner to file the returns electronically with regard to the alleged suppression of income made by M/s.OAS Digital Infrastructure Private Limited. According to the petitioner, the returns filed by the petitioner subsequent to the initiation of reopening of the assessment proceedings by the respondents were returned with an error report, since the e-portal of the respondents does not permit a company, which has been merged with another company pursuant to an amalgamation order passed by a Court, to submit its report electronically.

10.It is also an admitted fact that the current Income Tax Rules does not permit filing of returns manually. While that be so, the benefit of doubt should be given to the assessee. It is the case of the petitioner that they were unable to submit the returns due to the fact that the e-system portal of the respondents does not enable a company, which has been merged with another company pursuant to an amalgamation order passed by a Court, to file its income tax returns manually. The petitioner having produced the error report of the respondents will clearly establish that the attempts made by the petitioner to submit the returns for M/s.OAS Digital Infrastructure Private Limited, due to the fact that the e-portal system of the respondents does not enable the said report to be filed electronically, was a genuine one.

11.Even though the learned Standing Counsel for the respondents vehemently argued that the reasons for non filing of the returns by the petitioner cannot be believed in view of the fact that the petitioner had contended before the respondents through their communication that they need not file returns on behalf of M/s.OAS Digital Infrastructure Private Limited, the same cannot be accepted by this Court, as there is no conclusive proof to show that the attempts made by the petitioner to file the returns was not a genuine one. As observed earlier, the benefit of doubt must also be given to the assessee. Therefore, this Court is of the considered view that principles of natural justice has been violated by the respondents while passing the impugned assessment order, as no opportunity has been given to the petitioner to file their returns pursuant to the notice issued by the respondents under Section 148 of the Income Tax Act, 1961, for reopening of assessment.

12.For the foregoing reasons, the impugned assessment order, dated 31.12.2019 passed by the second respondent against the petitioner for the assessment year 2012-13 is hereby quashed and the matter is remanded back to the second respondent for fresh consideration and the second respondent shall pass final assessment orders after permitting the petitioner to file the returns under Section 147 of the Income Tax Act, 1961, on merits and in accordance with law after giving adequate opportunity to the petitioner including granting them the right of personal hearing within a period of four weeks from the date of receipt of a copy of this order. The petitioner is directed to file their return manually within a period of two weeks from the date of receipt of a copy of this order.

13.With the above directions, this Writ Petition is disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (Crl Side)

// True Copy //

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Sub Assistant Registrar(CS)

cmr

To

1.The Income Tax Officer,
Ward 3(2), 4th Floor, Main Building,
Williams Road, Contonment,
Thiruchirapalli-620 015.

2.The Income Tax Officer,
Ward 1(2), 4th Floor, Williams Road, Contonment,
Thiruchirapalli-620 015.

+1 CC to M/s.ARUN KARTHICK MOHAN, Advocate (SR-23790[F] dated 03/12/2020)

+1 CC to M/s.N.DHILIP KUMAR, Advocate (SR-23831[F] dated 03/12/2020

Order made in
W.P.(MD)No.2897 of 2020
02.12.2020

MR(CO)
KK(10.12.2020) 5P 5C