Urmila Ingale

URMILA PRAMOD INGALE Digitally signed by URMILA PRAMOD INGALE Date: 2021.09.22 17:56:40 +0530

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 4000 OF 2021

M/s.Darshan Enterprises thru.its Partner
Mr.Jagdish K.Khetwani ..Petitioner
vs.
Union of India and ors. ..Respondents

Dr.Birendra Saraf, Senior Advocate a/w Mr.Kushal Amin i/b Mr.Jayesh M. Joshi, for Petitioner.
Mr.Sham V. Walve a/w Mr.Pritish Chatterjee, for Respondents.

CORAM : K.R.SHRIRAM, J.
M. S. KARNIK, J.

DATE: SEPTEMBER 21, 2021

P.C. :

1. Petitioner is a partnership firm that had filed its annual returns for Assessment Year 2018-19 returning an income of Rs.8,72,88,880/-. Petitioner was issued notices under Sections 143(2) and 142(1) of the Income Tax Act, 1961 (the 'Act') between September 2019 and April 2021. Petitioner has replied to each of those notices, some within time, some little late. The last of the reply that petitioner gave was on April 30, 2021.

2. On May 24, 2021, petitioner received another notice under Section 142(1) of the Act calling upon petitioner to furnish on or before May 28, 2021 by 10.24 a.m. the accounts and documents specified in the annexure to the notice. On May 27, 2021, petitioner addressed a communication seeking 15 days time to furnish the requisite documents/details/information because (a) details sought for were voluminous; (b) petitioner being based at Thane, Maharashtra, there were restrictions due to lockdown declared in view of Covid situation and their staff were unable to visit office to prepare the submission. This response admittedly has been received by respondents. Petitioner thereafter received the impugned assessment order dated June 23, 2021 in which, it is mentioned that petitioner had sought an extension vide its letter dated May 27, 2021 and the time was extended upto June 3, 2021 and notwithstanding the extension of time, petitioner has not complied with the queries. It is stated in the petition that notice granting extension upto June 3, 2021 was never received by petitioner.

3. It is petitioner's case that they attempted to upload reply after June 6, 2021 but due to non-functioning of the e-portal, they

could not access the said portal after requesting time for 15 days. A copy of reply that petitioner wanted to send is also annexed to the petition. The fact that there was problem with the e-portal of respondents cannot be doubted because of the various press releases issued by the revenue department. Because of the problems faced and Covid situation, a press release was issued by Central Board of Direct Taxes on June 25, 2021 granting further extension of timelines for tax compliances. Therefore, the Government of India, Ministry of Finance was conscious of the fact that many taxpayers are facing problems due to Covid pandemic and timelines have to be extended. There is also a press report on June 23, 2021 wherein even Finance Minister has expressed concern on the problems faced in the new Income Tax portal and had asked the service provider to fix all issues on the new Income Tax portal like viewing past ITRs and e-proceedings etc.

4. In the affidavit in reply, it is stated that as per assessment order dated June 23, 2021, there is no addition of income in respect of issues mentioned in the annexure to notice under Section 142 (1) dated May 24, 2021. Thus, the reply of the petitioner dated June

15, 2021 which could not be uploaded by the petitioner due to technical glitch, has no significance as no addition as such is made on those issues as stated above. This, we find, is the primary defence raised in the affidavit in reply to petitioners grievance that they could not file reply to the last show cause notice dated May 24, 2021.

5. The fact, is a show cause notice dated May 24, 2021 has been issued under Section 142(1) of the Act. Certainly petitioner should be permitted to file reply and the same should be considered and dealt with in the assessment order. In the assessment order, there is no mention that non-filing of the reply made no difference to the final conclusion that was arrived by Assessing Officer. In fact, in the assessment order, it is stated that assessee has not complied with the queries. Therefore and also in view of the restrictions due to lockdown during Covid situation in Thane district that was prevailing and glitches in the e-portal of respondents, assessment order dated June 23, 2021 has to be set aside and is hereby set aside. The consequential notice of demand and notice for penalty are also set aside.

6. Dr. Saraf states that proposed reply dated June 15, 2021 that is annexed to the petition at page 87 (without annexures) will be uploaded in the portal within one week from today.

7. Respondents may re-initiate the proceedings from the stage when the notice dated May 24, 2021 was issued and intimate petitioner accordingly. On such intimation being received, petitioner shall file its response within the time prescribed in the said intimation. The Assessing Officer may pass such order as he deems fit in accordance with law but shall, if requested by petitioner, also grant a personal hearing as per Rules prescribed .

8. Petition disposed.

(M.S. KARNIK, J.) **(K.R.SHRIRAM, J.)**