IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.02.2021

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THE HONOURABLE DR. JUSTICE ANITA SUMANTH

Writ Petition No.728 of 2020
and
WMP. Nos.3354 & 881 of 2020

Smt.Kanagavalli …Petitioner

Vs

Assistant Commercial of Income Tax,
Office of the Assistant Commissioner of Income Tax,
Non Corp. Circle 22(1) (TBM),
1st & 2nd Floor, 7, Ramakrishna Street,
West Tambaram, Chennai - 600 045.
… Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of Writ of Certiorari, to call for the records relating to both the impugned orders ITBA/AST/S/143(3)/2019-20/1022437975(1), ITBA/AST/S/213/2019-20/1022438584(1), ITBA/AST/S/156/2019-20/1022437975 (1) dated 16.12.2019 passed by the respondent and quash the same.

For Petitioner : Mr.J.Harikrishna

For Respondents : Ms.Hema Muralikrishnan, Senior Standing Counsel

O R D E R

Heard Mr.J.Harikrishna, learned counsel for the petitioner and Mrs.Hema Muralikrishnan, learned Senior Standing Counsel for the revenue.

2. The challenge in this matter is to an order of assessment passed in terms of the provisions of the Income Tax Act, 1961 (in short 'Act') dated 16.12.2019 for Assessment Year (A.Y.) 2017-18. The main ground agitated is violation of principles of natural justice.

3. Learned counsel for the petitioner points out that show cause notice has been issued on 11.12.2019 listing the matter for personal hearing on 16.12.2019. However, the same has been served only subsequent to the time of personal hearing and there has been no opportunity of hearing extended to the petitioner.

4. Per contra, learned Senior Standing Counsel for the revenue would state that the petitioner's authorised representative had appeared on 12.12.2019 and thus the petitioner's reply to the show cause notice dated 11.12.2019 is assumed to have been taken into account, seeing as the show cause notice has been served by e-mail as well.

5. On the basis of the rival contentions as above, I have recorded vide order dated 09.02.2021, as follows:

> 'Heard Mr.J.Harikrishna, learned counsel for the petitioner and Mrs.Hema Muralikrishnan, learned Senior Standing Counsel for the respondent.
>
> 2. This is a case where the petitioner has not filed a return of income and the proposal for assessment refers to certain bank transactions involving specified bank notes during the demonetization period which are proposed to be brought to tax. No doubt, the petitioner has been tardy in its responses to various notices and communications. However, the show cause notice issued by the respondent is dated 11.12.2019 crystallising the issue proposed to be dealt with in assessment and fixing the matter for personal hearing on 16.12.2019. Admittedly, this notice fixing the personal hearing on 16.12.2019 at 10.00 a.m. has been received by the petitoner, as per the postal track, only at 3:46:57 on 16.12.2019.
>
> 3. Learned counsel for the revenue refers to a reply filed by the petitioner and a personal hearing conducted on 12.12.2019 and states that since show cause notice was sent by e-mail, the appearance of the authorised representative on 12.12.2019 along with the written reply which has been taken into consideration by the Officer, obviates any necessity for a subsequent personal hearing. Thus the show cause notice sent by e-mail would have been instantly received by the petitioner and a hearing has been conducted in pursuance thereof.
>
> 4. This submission assumes that reply dated 12.12.2019 and personal hearing conducted on the same

day is pursuant to show cause notice dated 11.12.2019.

5. The Records of assessment must reveal this position and Mrs.Hema Muralikrishnan seeks some time to produce the same.

6.List on 11.02.2021 immediately after admission.'

6. I have expressed an opinion that it is only if the records of assessment specifically reveal the position that the petitioner was in receipt of show cause notice dated 11.12.2019 crystallising the issues proposed to be dealt with in the assessment and replies have been put forth by the petitioner to the aforesaid proposals, that it could be assumed that the show cause notice, sent through e-mail, has been taken note of and responded to by the petitioner.

7. Learned Senior Standing Counsel today confirms, on a perusal of the records, that there is nothing in the record to indicate that the proposals in the show cause notice had been discussed in the course of hearing on 12.12.2019.

8. The benefit of doubt, in the above circumstances, should be extended to the petitioner. It is also admitted that the show cause notice has been received by the petitioner on the date of hearing and beyond the time of hearing. The impugned order is also passed on the same date of hearing proposed in the show cause notice, i.e., 16.12.2019.

9. In the light of the aforesaid discussion, the impugned order is set aside. Since the assessments are now to be conducted in terms of the faceless assessment scheme, I refrain from fixing a date of hearing afresh and merely direct that proceedings for assessment be completed after hearing the petitioner within a period of six (6) weeks from today.

10. This Writ Petition is allowed. No costs. Connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

Assistant Commercial of Income Tax,
Office of the Assistant Commissioner of Income Tax,
Non Corp. Circle 22(1) (TBM),
1st & 2nd Floor, 7, Ramakrishna Street,
West Tambaram, Chennai - 600 045.

+1cc to Mr.Hema Muralikrishnan, Senior Standing Counsel
Advocate, S.R.No. 793

+1cc to Mr.N.Mahendrababu, Advocate, S.R.No. 7800

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LN(CO)

GN(12/02/2021)