IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.12.2021

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THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.No.2339 of 2019
and
W.M.P.No.2582 of 2019

(Through Video Conferencing)

Shri.Mahalingam Karthikeyan,
Proprietor M/s. Sun Yarn,
Son of Mr.Mahalingam,
No.175/50, Kongu Main Road,
Near Aachi Electronics,
Thirupur - 641 607. ... Petitioner

Vs

1. The Income Tax Officer,
   Ward-1(3),
   121, Adams Building, First Floor,
   60 Feet Road, Tirupur - 641 602.

2. The Joint Commissioner of Income Tax,
   Range-1,
   121, Adams Building, 1st Floor,
   60 Feet Road, Tirupur - 641 602.

... Respondents

Prayer Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari calling for the records in PAN No.BDTPK1630B dated 31.12.2018 on the file of the first respondent relating to the Assessment Year 2013-2014, and quash the same.

For Petitioner : M/S.G.Baskar

For Respondents : Mr.A.N.R.Jayaprathap
Junior Standing Counsel

ORDER

The petitioner suffered an Assessment order for the Assessment Year 2013-14 under Section 143(3) of the Income Tax

Act on 31.03.2016. Aggrieved by the said order, the petitioner had preferred an appeal before Appellate Commissioner. The Appellate Commissioner partly allowed and partly disallowed the appeal by an order dated 25.11.2016. The petitioner was assessed to an Income of Rs.3,88,36,080. The Appellate Commissioner by the aforesaid order confirmed the tax on Rs.29,37,925 under Section 40A(3) of the Income Tax Act, 1961. For the balance amount of Rs.2,72,14,0485 and Rs.33,00,000/- by the CIT (Appeals) relief was granted to the petitioner.

2.Aggrieved by the aforesaid order, the Income Tax Department represented by the first respondent preferred an Appeal before the Income Tax Appellate Tribunal. The Tribunal after considering the submissions of either side set aside the order dated 25.11.2016 of the CIT (Appeals) vide order dated 09.06.2017 and remitted the case for de novo consideration by the first respondent/Assessing Officer.

3.The order of CIT Appeal was set aside by the Tribunal with the following observations:

> We have heard the rival submissions and gone through the CIT(A) order. It is clear that the CIT(A) has not given an opportunity to the AO under Rule 46A of the I.T Rules and hence, we set aside this case to the AO, who shall after examining the relevant material and after giving due opportunity to the assessee shall pass a speaking order on the above issues.

4.It appears that after the Tribunal order came to be passed series of communication were exchanged between the petitioner and the 1st respondent. The allegations have also been levelled by the petitioner against the officer who was holding the office of the first respondent. The petitioner also appears to have given compliant before the 2nd respondent Joint Commissioner of IT department and also chief justice of this Court. In the process, the time for completing the Assessment by 31.12.2018 would have lapsed. Under these circumstances, the first respondent has passed the orders on 31.12.2018 based on the available records.

5.The manner in which the communications were exchanged between the petitioner and the incumbent of the first respondent indicates that the first respondent was heckled and was forced to pass an order in a hurry. Perhaps it would have been provident for the first respondent to have been referred the case to an officer higher in the hierarchy for completing the assessment. Although, the conduct of the petitioner cannot be condoned, nevertheless the impugned order appears to be passed in a hurry to avoid the lapsing of assessment on account of the time.

6.Considering the same, I am inclined to quash the impugned order and remit the case back to the respondent. The petitioner may file, reply/additional representation if any within a period of thirty days from the date of receipt of a copy of this order before the 1st respondent. The petitioner is directed to cooperate with the 1st respondent. The 1st respondent is directed to pass a speaking order on merits and in accordance with law within a period of sixty days from the date of receipt of a copy of this order.

7.Accordingly, this writ petition stands disposed of with the above observations. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

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To

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+1cc to Mr.G.Baskar, Advocate, S.R.No.65938

+1cc to Mr.A.P.Srinivas, Advocate, S.R.No.66545

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SS(CO)
SU(19/01/2022)