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.2335 of 2019
and
W.M.P.Nos.2577 & 2578 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 2016-2017, and quash the same.

For Petitioner : Mr.G.Baskar

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

ORDER

The petitioner has challenged the impugned Assessment Order dated 31.12.2018 passed under Section 143(3) of the Income Tax Act, 1961. It is the specific case of the petitioner that the respondents had called upon the petitioner to furnish certain documents which were furnished by the petitioner over a period of time. However, by an communication dated 06.12.2018, the petitioner had requested three months time for furnishing some of the other documents.

2.It is the further case of the petitioner that ignoring the same, the first respondent kept writing letters to the petitioner by asking the petitioner to comply with the requirements as the Assessment would get time barred by 31.12.2019.

3.The learned counsel for the petitioner submits that some of the communication which were sent earlier were also received by the petitioner long after the time fixed for compliances by the petitioner. It is further submitted that the petitioner had also approached this Court in W.P.No.34337 of 2018 and that the order came to be passed on 03.01.2019. It is submitted that if one fresh opportunity is granted to the petitioner by remitting the case back to the respondent, the petitioner will be able to establish the case. It is further submitted that the petitioner will cooperate and furnish all the documents.

4.Opposing to the prayer, the learned counsel for the respondent submits that the Writ Petition in W.P.No.34337 of 2018 was disposed based on the representations made by the Counsel for the petitioner in open Court by merely referring to the communication dated 06.12.2018 of the petitioner. The learned counsel for the respondent further submits that after 06.12.2018, several notices were issued to the petitioner which were not complied by the petitioner, thus the impugned order came to be passed. It is submitted that limitation would have expired and therefore the assessment order came to be passed. He submits that the petitioner has an alternate remedy under Section 243(3) of the Income Tax Act, 1961.

5.Heard the learned counsel for the petitioner and the learned counsel for the respondent and perused the orders passed on 03.01.2019 in W.P.No.34337 of 2018. The operative portion of the aforesaid order which reads as under:-

> "Mr.ANR.Jaya Prathap, learned Standing Counsel takes notice for the respondent. By consent of the parties, this main writ petition is taken up for final disposal at the admission stage itself.

2.The petitioner seeks for a direction to the respondent to grant six months time for furnishing the documents relating to assessment year 2016-17.

3.Heard both sides.

4.It is seen that the respondent/Assessing Officer issued a notice dated 03.12.2018, calling upon the petitioner to furnish certain details and documents for the purpose of completing the assessment in respect of assessment year 2016-17. The petitioner by way of their letter dated 06.12.2018, sought three months time for furnishing those documents along with their reply on the reason that their bank has shifted their business place and that the Commercial Tax Department has not furnished certain documents to the petitioner so far. It is also stated in the said letter that they are collecting some documents from the Establishment, in which, the petitioner has made the transactions and therefore, the petitioner sought for three months time.

5.The learned standing counsel for the respondent submitted that even according to the petitioner, they requested only three months time through their letter dated 06.12.2018 and therefore, there is no justification in seeking six months time by filing the present writ petition.

6.Considering the above stated facts and circumstances and considering the reasons stated in the letter dated 06.12.2018, the petitioner is directed to furnish the reply along with necessary documents in respect of the assessment year 2016-17 before the respondent/Assessing Officer on or before 15.02.2019. If no reply along with necessary documents are filed within the time stipulated herein, it is open to the Assessing Officer to proceed with the assessment in accordance with law. It is made clear that no further time will be granted to the petitioner in any event.

7.With the above direction and observation, this writ petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.”

6.When the aforesaid order was passed on 03.01.2019, neither the petitioner nor the learned counsel for the respondent were aware of the fact that the impugned order had already been earlier passed on 31.12.2018. The facts on record indicates that the Court was inclined to extend the period of completing the assessment even as on 03.01.2019, even though, the Statutory period completing the assessment would have expired on 31.12.2018.

7.Considering the fact that the petitioner did not get adequate opportunity to furnish the documents and participate in the adjudication mechanism prescribed under the Act, the impugned order is quashed and the case is remitted back to the 1st respondent to pass a speaking order in accordance with law and on merits within a period of three months from the date of receipt of a copy of this order.

8.The petitioner is directed to furnish all the documents and file any reply or written submissions if any before the 1st respondent within a period of thirty days from the date of receipt of a copy of this order. In case, the petitioner fails to cooperate with the first respondent, the respondent are at liberty to pass appropriate orders on merits based on materials available on records.

9.This writ petition stands disposed of with the above observations. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

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To

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.

+1cc to Mr.G.Baskar, Advocate, S.R.No.65939

+1cc to Mr.A.P.Srinivas, Advocate, S.R.No.66544

W.P.No.2335 of 2019
and
W.M.P.Nos.2577 & 2578 of 2019

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