IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.12.2021

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THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.No.2788 of 2019
and
W.M.P.Nos.3057 & 3059 of 2019

(Through Video Conferencing)

M/s.ZOHO Corporation Private Limited
Represented by its Director Mr.N.Jai Anand,
Plot No.140, 151 Estancia IT Park, GST Road,
Guduvanchery (Post), Vallancheri Village,
Chengalpet Taluk, Kanchipuram 603 202,
Tamil Nadu, India. ...Petitioner

vs.

The Assistant Commissioner of Income Tax,
Corporate Circle (3) 2
Wanaparthy Block,
121 Mahatma Gandhi Road,
Nungambakkam, Chennai 600
034. ...Respondent

Prayer: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari to call for the records comprised in the impugned assessment order passed by the respondent under Section 143(3) of the Income Tax Act, 1961 for Assessment Year 2016-17 in PAN : AAACZ4322M in order No.ITBA/AST/S/143/(3)/2018-19/1014677747(1) dated 31.12.2018 and quash the same.

For Petitioner : Mr.N.V.Balaji

For Respondent : Mrs.Hema Muralikrishnan
Senior Standing Counsel.

ORDER

The petitioner has challenged the impugned Assessment Order dated 31.12.2018 for the assessment year 2016-17 on the ground that in the assessment order, the respondent did not issue a show cause notice.

2. It is submitted that the petitioner had made few reimbursement of expenses to its subsidiary namely Estancia IT Park Pvt. Limited which income has now been treated as deemed dividends within the meaning of Section 2 (22) (e) of the I.T.Act, 1961.

3. The learned counsel for the petitioner has relied on the decision of this Court in M/s.Magick Woods Exports Private Limited, A-8, Industrial Complex, Maraimalai Nagar, Kancheepuram, Chennai, Tamil nadu 603 209 vs. Assistant Commissioner of Income Tax, Corporate Circle4(1), Aayakar Bhawan, No.121, Mahatma Gandhi, Nungambakkam, Chennai 6000 034, W.P.No.1588 of 2020 dated 17.06.2021 and clarification issued by the Board of Direct Taxes (CBDT) bearing No.20 of 2015 dated 29.12.2015. In the Board clarification, it has been clarified as under:

> "4. The Board further desires that in all cases under scrutiny, where the Assessing Officer proposes to make additions or disallowances, the assessee would be given a fair opportunity to explain his position on the proposed additions/disallowances in accordance with the principle of natural justice.In this regard, the Assessing Officer shall issue an appropriate show-cause notice duly indicating the reasons for the proposed additions/disallowances along with necessary evidences/ reasons forming the basis of the same. Before passing the final order against the proposed additions/disallowances due consideration shall be given to the submissions made by the assessee in response to the show cause notice."

4. The learned counsel for the petitioner further submits that the assessment order in W.P.No.1588 of 2020 was set aside by the learned Single Judge of this Court in W.P.No.1588 vide order dated 17.06.2021. Therefore, he prays for similar relief in this writ petition.

5. Opposing the prayer, the learned Senior Standing Counsel for the respondent submits that the petitioner has an alternate remedy by way of an appeal before the Appellate Commissioner and further submitted at the time of assessment, the respondent is not expected to issue any notice and therefore there is no making any addition. Learned counsel further submits that the petitioner may be directed to work out remedy before the Appellate Commissioner in accordance with law.

6. Heard the learned counsel for the petitioner and the learned Senior Standing Counsel for the respondent. I have perused the impugned order and the instructions issued by the

Board of Direct Taxes (CBDT) bearing No.20 of 2015 dated 29.12.2015 and I have also perused the order of this Court in W.P.No.1588 of 2020.

7. It is noticed that the said order in W.P.No.1588 of 2020 of this Court has applied the circular and had set aside the order impugned therein. It prima facie indicates that the show cause notice ought to have been issued duly indicating the reasons for the proposed additions/disallowances.

8. Considering the same, the impugned order stands quashed. The impugned order, which stands quashed, shall be treated as a notice for the purpose of the above circular. The case is remitted back to the respondent to pass a speaking order on merits and in accordance with law, within a period of 90 days from the date of receipt of a copy of this order.

9. The petitioner is also directed to reply/additional representation if any, within a period of 30 days from the date of receipt of a copy of this order. On receipt of such reply, the respondent shall pass order on merits, preferably, within a period of 60 days thereafter.

10. This writ petition stands allowed with above observations. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-VI)

//True Copy//

Sub Assistant Registrar

kkd

To

The Assistant Commissioner of Income Tax,
Corporate Circle (3) 2
Wanaparthy Block,
121 Mahatma Gandhi Road,
Nungambakkam, Chennai 600 034.

+1cc to M/s.Hema Muralikrishnan, Advocate SR. No.64250
+1cc to Mr.N.V.Balaji, Advocate SR. No.65090

W.P.No.2788 of 2019

RSI (CO)
PR (28/12/2021)