IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.11.2021

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THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.No.10914 of 2021
&
W.M.P.Nos. 11548 & 11546 of 2021
(Through Video Conferencing)

Shivsu Canadian Clear Waters Ltd.
No.6B2 II Floor
Parivakkam Road, Leelavathy Nagar
Sennerkuppam, Poonamallee
Chennai- 600 056.
Rep.by its Authorized Signatory
N.Shanmugam ...Petitioner

Vs

Income Tax Officer,
Corporate Ward 6(2),
Wanapathy Block No.121, MG Road,
Nungambakkam, Chennai - 600 034. ...Respondent

Prayer: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, calling for the entire records of the Respondent contained in impugned assessment order dated 31.03.2021 bearing ITBA/COM/F/17/2020-21/1032087645(1) for AY 2014-15 for PAN:AAICS2574C and quashing the same as arbitrary, unjust and unlawful, and to consequently direct the respondent to provide the petitioner with an opportunity of hearing before passing an assessment order de novo for AY 2014-15, in terms of the directions of the learned Income Tax Appellate Tribunal issued through its order dated 23.12.2019.

For Petitioner : Mr.Suhrith Parthasarthy

For Respondent : Mr.ANR JayaPrathap
Junior Standing Counsel

ORDER

The petitioner has challenged the impugned Assessment order dated 31.03.2021 for the Assessment Year 2014-15. The aforesaid order has been passed pursuant to an order of remand dated 23.12.2019 of the Income Tax Appellate Tribunal.

2.The case of the petitioner is that the Tribunal by the aforesaid order had specifically directed the Assessing Officer to compute the assessable credits in terms of the observations in paragraph 6 of the aforesaid order which reads as under:-

> "6.We heard the rival submissions and considered carefully. It is clear from the above that the assessee is in the business of manufacturing of water treatment plants. It has shown in its current liabilities advances received from its customers at Rs.6,46,53,183/- and hence AO required the assessee to furnish the name and address of the persons from whom such advances were received. When it failed, the AO required it to furnish confirmation from the persons from whom it received such advances. On its further failure, the AO treated them as a bogus credit and assessed them. On the appeal, the assessee contended before the ID CIT(A), that they were genuine credits and identity can be proved. Therefore, the ID CIT(A) forwarded the assessee's submissions to the AO for a re-examination by giving an opportunity to the assessee to prove the genuineness of those credits. The AO has observed in the remand report, that the assessee did not discharge the primary onus of furnishing confirmation letter pertaining to those credits. The A O's conclusion in the remand report briefly is that there were 294 parties and the assessee gave gave addresses only in respect of 129 parties, in respect of whom the AO issued notice u/s.133(6) seeking their confirmation. Out of 129 notices sent, 52 notices returned unserved and response was received only in respect of 26 parties. Out of 26 parties, only 15 parties confirmed those credits and 11 parties denied the credits as claimed by the appellant, 51 parties did not respond at all. In such facts circumstances, the id CIT(A) held that it is clear that the assessee's claim that all those credits were genuine is not acceptable. When the remand report was forwarded to the assessee, the AR argued that at least the confirmation of credits made by the 15 parties should be deleted. Therefore, the Id CIT(A) directed the AO to delete the addition of credits in respect of those 15 parties, who have confirmed the credit, at Rs.1,60,57,680/- and sustained the remaining addition. Since the impugned sum being credits in the assessee's books of account, it is settled law that the assessee must satisfy three conditions namely, (1) identity of the creditor, (2)genuineness

of the transaction and (3) credit worthiness of the creditor. Once this is established its onus even after the first appellate authority gave an opportunity. Therefore, the addition sustained is upheld subject to the following further finding. We find merit in the assessee's submission that the addition on such cases cannot be made during this assessment year to the extent there are opening balances in those creditors. Therefore, we direct the AO to compute the assessable credits accordingly, after giving an effective opportunity to the assessee. In the result the assessee's appeal is treated as partly allowed to the above extent."

3.The learned counsel for the petitioner submits that though the aforesaid order was passed on 23.12.2019, there was no response from the respondent calling upon the petitioner to furnish the details and that a notice of hearing was issued to the petitioner on 11.03.2021, fixing the date of hearing on 15.03.2021. It is submitted that the petitioner had received the aforesaid letter on 16.03.2021 and therefore, the petitioner sent a representation dated 17.03.2021 and sought for fifteen days time for responding to the notice. It is further submitted that instead of granting fifteen days as sought for by the petitioner, the respondent issued a another notice dated 23.03.2021 and called upon the petitioner to respond on or before 26.03.2021 and thereafter passed the impugned order dated 31.03.2021.

4.The learned counsel for the petitioner further submits that this is a fit case for quashing the impugned order by remitting the case back to the respondent to pass a fresh Assessment order in line with the observations of the tribunal in its order dated 23.12.2019.

5.Defending the impugned order, the learned Junior Standing Counsel for the respondent submits that the petitioner did not furnish the records though the order was passed by the Tribunal on 23.12.2019. Even otherwise, various notices which were sent to the petitioner through Registered post which were also sent to the petitioner by way of e-mail and therefore its is not correct to the petitioner to state that the petitioner did not receive the notice in time.

6.The learned Junior Standing Counsel for the respondent further submits that since the Assessment is of the year 2014-15 and the Assessment could have got time barred and since the petitioner had failed to co-operate with the respondent, the respondent was constrained to pass an order on 31.03.2021 based on the available records. He therefore submits that the petitioner should be directed to work out the remedy before the Appellate Commissioner and therefore this writ petition is liable to be dismissed by directing the petitioner to approach the Appellate Commissioner.

7.Heard the learned counsel for the petitioner and the learned Junior Standing Counsel appearing for the respondent and perused the order passed passed by the Tribunal on 23.12.2019 for the Assessment Year 2014-15 and the communication exchanged between the parties herein starting from 21.02.2020 and notice dated 11.03.2021.

8.Though the petitioner has not been neither diligent nor co-operated with the respondent, the fact indicate that the respondent started the proceedings only on 11.03.2021 about nineteen(19) days prior to the expiry of limitation for completing the Assessment. It is evident that the respondent was constrained to proceed with the Assessment in order to ensure that the Assessment does not time barred. However, in the process there is a violation of principles of natural justice as time given to the petitioner by the respondent was not sufficient to reply and file documents.

9.Considering the same, the impugned order is quashed and the case is remitted back to the respondent to pass a fresh speaking order in accordance with law and on merits within a period of sixty five days from the date of receipt of a copy of this order. Needless to state, that the petitioner is directed to file a reply/representation if any, within a period of thirty days from the date of receipt of a copy of this order. Thereafter, the respondent shall pass an order within a period prescribed above, if required, the petitioner is requested for personal hearing or through video conferencing.

10.Accordingly, this writ petition stands disposed of with the above observations. No costs. Consequently connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

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To

The Income Tax Officer,
Corporate Ward 6 (2),
Wanapathy Block No.121,
MG Road, Nungambakkam
Chennai - 600 034.

+1cc to Mr.Suhrith Parthasarathy, Advocate, S.R.No.62255

+1cc to Mr.A.P.Srinivas, Senior Standing Counsel(IT),
S.R.No.62403

W.P.No.10914 of 2021
and
W.M.P.Nos.11548 & 11546 of 2021

GPL(CO)
RGA(05/01/2022)