WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.11.2021

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.No.12311 of 2021
and
W.M.P.Nos.13091 to 13093 of 2021
(Through Video Conferencing)

M/s.Nissan Motor India Private Limited,
Represented by its Authorized Signatory
Mr.Prantap Kalra,
Plot No.1A, SIPCOT Industrial Park,
Mattur Post, Oragadam, Sriperumbudur,
Kancheepuram, Chennai,
Tamil Nadu – 602 105. ...Petitioner

Vs

1. The Additional/Joint/Deputy/Assistant Commissioner of Income Tax/Income Tax Officer,
   National e-Assessment Centre, Delhi.

2. The Assistant Commissioner of Income-tax,
   Corporate Circle 4(1),
   Aayakar Bhawan,
   No.121, Mahatma Gandhi Road,
   Nungambakkam, Chennai – 600 034. ...Respondents

Prayer: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari calling for the records comprised in the Impugned Order bearing Order No.ITBA/AST/S/143(3)/2021-2022/1032600211(1) dated 22.04.2021 passed by the first respondent under Section 143(3) read with Section 144B of the Act for the Assessment Year 2016-2017, quash the same.

For Petitioner : Mr.N.V.Balaji

For Respondents : Mrs.Hema Murali Krishnan
Senior Standing Counsel

ORDER

The petitioner has challenged the impugned order dated 22.04.2021 passed by the first respondent on the ground that the impugned order has been passed without jurisdiction and in violation of Section 144(C) of the Income Tax Act, 1961 (hereinafter referred to as the IT Act).

WEB COPY

2. It is the case of the petitioner that the first respondent ought to have passed a Draft Assessment Order. It is submitted that instead an Assessment Order has been passed bypassing the statutory safeguards under Section 144(C) of the IT Act and therefore it is liable to be quashed. In this connection, the learned counsel for the petitioner has relied on the following three decisions:-

(i) GE Oil & Gas India Private Ltd., Coimbatore, Tamil Nadu Vs Assistant Commissioner of Income Tax, Coimbatore Tamil Nadu, passed in W.P.No.1575 of 2020 dated 05.01.2021.

(ii) Vijay Television (P) Ltd., Vs Dispute Resolution Panel and others, passed in W.P.Nos.1526 & 1527 of 2014 dated 29.04.2014.

(iii) Assistant Commissioner of Income-tax, Media Circle-11, Chennai Vs Vijay Telivision (P) Ltd., passed in W.A.Nos.1327 to 1329 of 2014 dated 23.04.2018.

3. The learned counsel for the petitioner submits that the time for passing the Draft Assessment Order has also expired and therefore the impugned order has to be merely quashed, no further liberty should be given to the respondents for passing any fresh Draft Assessment Order.

4. Appearing on behalf of the respondents, the learned senior standing counsel submits that though the impugned order has passed under Section 143(3) read with Section 144B of the IT Act, nevertheless, the impugned order also indicates that it is a Draft Assessment Order and therefore the petitioner has an opportunity of filing appropriate objections before the Dispute Resolution Panel and therefore no premium should be given to the petitioner on account of the technical mistake in the impugned order that the order has been passed under Section 143(3) of the IT Act, 1961. It is submitted that the order also states that it is a draft assessment order under Section 144(C) of the IT Act, 1961. In this connection, the learned senior standing counsel for the respondents has drawn reference to Paragraphs 3 to 5 of the Counter Affidavit which reads as under:-

> "3. As regards the averments in paragraph 3, it is submitted that the same are admitted to the extent that it was a totally unintentional technical error and has occurred as it was the very first year of operation of the new scheme, that is Faceless Assessment Scheme 2019 (FAS-2019) and many functionalities which were new i.e., operative for the first time under the online faceless scheme were either from plain reading of Page No.2 of body of the order dated 22.04.2021 where it is stated that it is a "Draft Order u/s 144C of the Income Tax Act, 1961". The order was in fact passed by Respondent Assessing Officer as Order passed under section 144C of the Income Tax Act 1961 against which the eligible assessee i.e., petitioner could raise

https://hcservices.ecourts.gov.in/hcservices/

objection before the Hon'ble Dispute Resolution Panel (Hon'ble DRP) so that the assessment order could be finalized on the basis of the Directions of the Hon'ble DRP. But due to technical error, inadvertently the draft order was passed u/s 143(3) read with section 144B of the Income Tax Act instead of Draft Order u/s 144C of the Income Tax Act. As soon as this fact came to the notice of the Predecessor Respondent Assessing Officer, the same was brought to the notice of NeFAC, New Delhi by the Respondent Assessing Officer through proper channel i.e., through the Range Head and the concerned Commissioner of Income Tax seeking remedial action on its own through emails.

4. It is further submitted that what was intended to be passed by the 1st respondent is only a draft assessment order u/s 144C. In fact it is the draft assessment order u/s.144C which was sent to the Review Unit and the Review Unit concurred with the same. The averments in paragraphs 4 to 15 are not traversed upon. As regards the averments in paragraphs 16 to 35, it is reiterated that the mentioning of Sec.143(3) r.w.s 144B and consequential mentioning of charging of interest, generation of computation sheet is a totally unintentional technical error and has occurred as it was the very first year of operation of the new scheme, that is Faceless Assessment Scheme, 2019 (FAS-2019) and many functionalities which were new, that is operative for the first time under the online Faceless Scheme were either not operating (at times) or operating with errors at times. It is submitted that due to inadvertent technical error the case attained finality therefore, the system has generated Demand Notice was sent to the petitioner which is a part of online procedure on attaining the finality of the case or completion of proceedings u/s 143(3) of the Income Tax Act. On the other hand, if upon completion of assessment u/s 143(3) of the Income Tax Act if refund arises on excess charge of interest or otherwise then the system automatically generates Refund and sends it to the assessee. It is submitted that the fact that the order of the TOP was annexed as a part of the impugned order and that there was no mention of penally proceedings, shows that the impugned order was intended to be a draft order only and not otherwise.

5. It is submitted that the respondents had no intention of violating any statutory provisions, principles of natural justice or judicial precedents. However, the mistake has arisen due to technical glitches and neither the petitioner nor the respondent should benefit or suffer because of the same. It is therefore most respectfully submitted that this Hon'ble Court may be pleased to direct the petitioner as well as the respondents to treat the impugned order as an order u/s.144C(1) and further actions in consonance

WEB COPY
https://hcservices.ecourts.gov.in/hcservices/

with the provisions of Sec.144C may be taken by the petitioner and the respondents herein."

5. The learned senior standing counsel for the respondents further submits that there was an interim protection given to the petitioner on 02.06.2021 by keeping all the proceedings in abeyance. The learned senior standing counsel for the respondents further submits that as per Notification No.S.O.4805 (E) dated 31.12.2020 passed under Section 3(1) of the Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020, the time limit for passing appropriate order would have expired on 30.09.2021 and that the interim protection given to the petitioner on 02.06.2021 has operated against the Department and therefore the Department should be left free to pass a fresh Draft Assessment Order, if the Court is so inclined to interfere by quashing the impugned order.

6. By way of rejoinder, the learned counsel for the petitioner submits that the Department is aware of the consequences of the wrong orders passed and therefore no leverage should be given to the Department. It is further submitted that the impugned order should be quashed and no further liberty should be given to the respondents to pass any Draft Assessment Order at this distant point of time. The learned counsel for the petitioner refers to Paragraph 8 of the counter, which reads as under:-

> "8. As regards the averments of the Second Respondent that the inadvertent technical error happened as the impugned order was issued in the first year of operation of Faceless Assessment Scheme, 2019, the Petitioner submits that it is still incumbent upon the First Respondent to follow the mandatory procedure laid down under section 144B read with section 144C of the Act and if there is a violation, the assessment order is liable to the declared as one without jurisdiction, null and void and unenforceable. The Faceless Assessment Scheme, 2019, was brought into the statute vide section 144B of the Act by the Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020. By virtue of item (A) of sub clause (a) of section 144B(XXV) of the Act, it is incumbent upon the National Faceless Assessment Centre to forward a draft assessment order to the eligible assessee, where any variation made is prejudicial to the interest of assessee. It is also pertinent to note that the provisions of sub section (9) to section 144B explicitly provide that an assessment made under section 143(3) shall be non-est if the statutory procedure laid down under section 144B is not complied with."

7. Heard the learned counsel for the petitioner and the learned senior standing counsel for the respondents. I have

WEB COPY
https://hcservices.ecourts.gov.in/hcservices/

WEB COPY

perused the impugned order and the provisions of the Act and the notification issued therein. It is noticed that the impugned order dated 22.04.2021 is a hybrid order which indicates that it has been passed both as an Assessment Order and also as Draft Assessment Order. The explanation given by the respondents in their counter affidavit appears to be reasonable. The consequential demand notice dated 22.04.2021 appears to have been issued that on account of the confusion prevailing after adoption of Faceless Assessment, during the initial stage of implementation. Considering the same, the impugned order dated 22.04.2021 passed by the respondents both under Section 143(3) and under Section 144(C) of the IT Act stands quashed.

8. The respondents are directed to pass a fresh Draft Assessment Order within a period of thirty days from the date of receipt of a copy of this order. If such orders are passed, the petitioner is free to exercise one of the option under Section 144(C) of the IT Act, 1961. In case the petitioner fails to exercise such action, the first respondent may pass appropriate Assessment Orders on merits and in accordance with law.

9. This Writ Petition stands partly allowed in terms of the above observations. No costs. Consequently, connected Writ Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (CS-VI)

//True Copy//

Sub Assistant Registrar

arb

To

1.The Additional/Joint/Deputy/Assistant Commissioner
of Income Tax/Income Tax Officer,
National e-Assessment Centre, Delhi.

2.The Assistant Commissioner of Income-tax,
Corporate Circle 4(1),
Aayakar Bhawan, No.121, Mahatma Gandhi Road,
Nungambakkam, Chennai – 600 034.

+1cc to Mr.N.V.Balaji, Advocate SR. No.57954
+1cc to Mrs.Hema Murali Krishnan, Advocate SR. No.57374

W.P.No.12311 of 2021
and
W.M.P.Nos.13091 to 13093 of 2021

PMK (CO)
PR (06/12/2021)

https://hcservices.ecourts.gov.in/hcservices/