IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 14.09.2021

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THE HONOURABLE MR.JUSTICE M.SUNDAR

W.P.No.17978 of 2021
&
W.M.P.Nos.19198 and 19199 of 2021

M/s. Cauvery Power Trading Chennai Pvt. Ltd.,
No.5, Ranganathan Gardens
15th Main Road Extn, Anna Nagar
Chennai – 600 040 ... Petitioner

Vs.

Assistant Commissioner
Income Tax Department
National E-Assessment Centre
Ministry of Finance
Government of India
New Delhi ... Respondent

Writ petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari calling for the records on the file of the respondent passing the impugned order dated 22.04.2021 and quash the same, as also the impugned notices dated 22.04.2021 issued under Section 156 and Section 274 read with Section 270A of the Act and Section 274 read with Section 271AAC (1) of the Act.

For Petitioner : Mr.G,Ashokapathy
for M/s.Pass Associates (Law Firm)

For Respondent : Mr.Prabhu Mukunth Arunkumar
Junior Standing Counsel

ORDER

Read this in conjunction with and in continuation of earlier proceedings made in the previous listing on 31.08.2021, which reads as follows:

'Mr.Ashokapathy, learned counsel of M/s.Pass Associates on behalf of writ petitioner submits that an order dated 22.04.2021 being assessment order made under Section 143(3) read with Section 144B of 'The Income-tax Act, 1961 (43 of 1961)' [hereinafter 'IT Act' for the sake of brevity] is called in question in captioned writ petition.

2. Learned counsel submits that one of the main submissions or one of the main grounds on which the impugned assessment order is assailed is that the procedure adumbrated in Section 144B(1)(xvi) of IT Act has not been followed.

3. Ms.Hema Muralikrishnan, learned Senior standing counsel accepts notice on behalf of respondent.

4. A perusal of the impugned assessment order brings to light that it has been digitally signed on 22.04.2021. Adverting to paragraph No.4 of the impugned order, learned Revenue counsel submits that she needs time to ascertain if the notices dated 17.12.2020, 31.12.2020 and 04.04.2021 referred to impugned assessment order are usual notices under Section 142(1) of IT Act or really opportunities given to the assessee. To be noted, learned counsel for writ petitioner contends to the contrary and submits that no opportunity has been given to writ petitioner-Assessee and the procedure ingrained in Section 144B (1)(xvi) of IT Act has been given a go-by.

5. Learned Revenue counsel seeks a fortnight's time to get instructions on the above point and revert to this Court. Request acceded to.

6. In the interregnum, the impugned assessment order will be kept in abeyance till the next listing.

7. List a fortnight hence. List in the 'Admission Board' i.e., 'MOTION LIST' on 14.09.2021.'

2. Today, Mr.G.Ashokapathy of M/s.Pass Associates on behalf of writ petitioner and Mr.Prabu Mukunth Arunkumar, learned Junior Standing Counsel for the sole respondent are before this Virtual Court and the main writ petition is taken up with the consent of both sides. Adverting to earlier proceedings, more particularly paragraph 4 thereat, learned counsel submits that it may not be necessary to advert to the notices as he has written instructions to the effect that no draft Assessment Order has been provided to the writ petitioner/Assessee. To be noted, there is no disputation or disagreement that this is a case of variation.

3. The above by itself puts an end to the captioned writ petition as there is a clear non-compliance qua requirements under Section 144B(7)(vii), which reads as follows:

> ' Section 144B(7)(vii):
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> 144B (7) For the purposes of faceless assessment—
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> (i) ............
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> (a) ............
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> (b) ............
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> (ii) ............
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> (iii) ............
>
> (iv) ............
>
> (v) ............
>
> (vi) ............
>
> (vii) in a case where a variation is proposed in the draft assessment order or final draft assessment order or revised draft assessment order and an opportunity is provided to the assessee by serving a notice calling upon him to show cause as to why the assessment should not be completed as per the such draft or final order or revised draft assessment order, the assessee or his authorised representatives, as the case may be, may request for personal hearing so as to make his oral submissions or present his case before the income tax authority in any unit.'

4. In a case of variation, if the Assessee/writ petitioner has not been provided with a copy of the draft Assessment Order, if the Assessee has not been called upon to state as to why the assessment should not be completed as per such draft Assessment Order, infraction of Section 144B(7)(vii) becomes an infarction qua assessment proceedings under Section 144B.

5. In the light of the narrative thus far, the following order is passed:

a) The impugned Assessment Order dated 22.04.2021 bearing reference ITBA/AST/S/143(3)/2021-22/1032621483(1) as well as the impugned notices dated 22.04.2021 bearing reference ITBA/AST/S/156/2021-22/1032621497(1), ITBA/PNL/S/270A/2021-22/ 1032621492(1) and ITBA/PNL/S271AAC(1)/2021-22/1032621493(1) are set aside;

b) The impugned Assessment Order and notices are set aside solely on the ground of non-compliance qua Section 144B(7)(vii) of Income-tax Act, 1961 without expressing any view or opinion on the merits of the matter;

c) The respondent shall adhere to Section 144B (7)(vii), provide the Assessee with draft Assessment order/show cause notice and proceed to complete the exercise. Proceeding to complete the exercise is not limited to compliance qua Section 144B(7)(vii), but all the ingredients and requirements adumbrated in Section 144B of IT Act have to be adhered to.

d) The writ petitioner/Assessee submits that it will cooperate with the exercise and ensure expeditious completion of the assessment.

e) The above exercise shall be completed as expeditiously as possible and in any event within twelve weeks from today i.e., on or before 07.12.2021.

The captioned writ petition is disposed of with the above directives. Consequently, connected WMPS are also disposed of as closed. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

gpa

To

Assistant Commissioner
Income Tax Department
National E-Assessment Centre
Ministry of Finance
Government of India
New Delhi

+1cc to M/s.Pass Associates, Advocate, S.R.No.47309
+1cc to Mr.Hema Muralikrishnan, Advocate, S.R.No.47029

W.P.No.17978 of 2021 &
W.M.P.Nos.19198 and 19199 of 2021

PMK(CO)
CT(23/09/2021)