IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 25.08.2021

CORAM

THE HONOURABLE MR.JUSTICE M.SUNDAR

W.P.No.17491 of 2021
&
W.M.P.Nos.18581 and 18582 of 2021

M/s.Statex Engineering Private Limited
Represented by its Managing Director
Mr.K.Subramanian
E-49, SIDCO Industrial Estate Kuruchi
Coimbatore - 641 021 ...Petitioner

Vs.

Additional/Joint/Deputy/Assistant
Commissioner of Income Tax/
Income Tax Officer
National Faceless Assessment Centre
Delhi ...Respondent

Writ petition filed under Article 226 of the Constitution of India for issuance of writ of certiorari calling for the records of the on the file of the respondent in passing the impugned order in ITBA/AST/S/143(3)/2021-22/1034519830(1) dated 29.07.2021 and quash the same as illegal, arbitrary and devoid of merit.

For Petitioner : Mr.R.Sivaraman

For Respondent : Mr.A.N.R.Jayapratap
Standing Counsel

ORDER

Mr.R.Sivaraman, learned counsel on record for writ petitioner and Mr.A.N.R.Jayapratap, learned counsel, who has accepted notice on behalf of lone respondent, are before this Virtual Court.

2. Captioned main writ petition is taken up with the consent of learned counsel on both sides as the matter turns on a very acute and narrow compass.

3. An order dated 29.07.2021 qua the writ petitioner company being an order made under Section 143 (3) of Income Tax Act,

1961' (hereinafter 'IT Act' for the sake of brevity), is the impugned order in the captioned writ petition. This order pertains to the Assessment year 2015-16. To be noted, this order has been made pursuant to an order dated 04.02.2020 made in exercise of powers under Section 263 of IT Act. The operative portion of this order dated 04.022020 under Section 263 is paragraph 9 and the same reads as follows:

> '9. The Assessing Officer is hereby directed to re-do the assessment afresh after verification of the facts discussed above. The Assessing Officer shall give adequate opportunity of being heard to the assessee in this regard before passing the fresh assessment order.'

4. The aforementioned order under Section 263 of the IT Act was carried in appeal to the 'Income Tax Appellate Tribunal, 'A Bench', Chennai' (hereinafter 'ITAT' for the sake of convenience and clarity) and ITAT, after full contest, vide order dated 16.07.2021 set aside 04.02.2020 order under Section 263 of IT Act. The sequitur is, there is no jurisdiction for making the order under Section 143(3) i.e., the impugned order.

5. Notwithstanding the above order of ITAT, the impugned order came to be made on 29.07.2021 and therefore, the same is without jurisdiction is learned counsel's say. Learned Revenue counsel, however, submits, on instructions, that the order of ITAT was not brought to the notice of the Authority concerned when the impugned order was made. This submission is recorded.

6. Be that as it may, without expressing any opinion on the merits of the matter, as it emerges clearly that the impugned order has been made without jurisdiction as absent 04.02.2020 order under Section 263, the impugned order cannot be made, this by itself draws the curtains on the impugned order. In other words, the prayer of the writ petitioner deserves to be acceded to.

7. There is one other aspect of the matter which needs to be addressed. The aforementioned order of ITAT is appealable and the Revenue can always prefer an appeal to this Court under Section 260A of the IT Act. As of today, no appeal has been preferred. Therefore, if so advised and if the Revenue chooses to file an appeal against the order of ITAT, though obvious, it will follow that further orders, if any and if that be so, will be dependent on what this Hon'ble Court decides in a possible appeal, but as of today, there is none. Therefore, the impugned order is set aside on the simple ground that on the date of the impugned order made, namely 29.07.2021, the Authority had no jurisdiction as the 04.02.2020 order under Section 263 of IT Act had been set aside in entirety by ITAT on 16.07.2021.

Writ petition allowed and impugned order dated 29.07.2021 bearing reference ITBA/AST/S/143(3)/2021-22/1034519830(1) is set aside. Consequently, connected W.M.Ps are also disposed of as closed. There shall be no order as to costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

gpa

To
The Additional/Joint/Deputy/Assistant
Commissioner of Income Tax/,
Income Tax Officer,
National Faceless Assessment Centre,
Delhi.

+1cc to Mr.A.P.Srinivas, Advocate, S.R.No.42609

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GP[co]
NSK 09/09/2021