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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.08.2021

CORAM

THE HON'BLE Mr.JUSTICE M.SUNDAR

W.P.No.17709 of 2021
and
WMP.Nos.18874 & 18875 of 2021

Estra Enterprises Pvt. Ltd.,
6th Floor Tower C, Tek Meadows,
No.51, Rajiv Gandhi Salai,
Sholinganallur, Chennai-600 119.
Represented by Authorized Signatory
Mr.R.Suresh Kumar ...Petitioner

-Vs.-

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

2. National Faceless Assessment Centre,
Income Tax Department,
Ministry of Finance,
Government of India,
Delhi. ...Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, calling for the records of the First Respondent in Assessment order dated 06.08.2021 bearing Identification No.ITBA / AST / S/ 143 (3) / 2021-22 / 1034696402 (1) and consequential Demand Notice dated 06.08.2021 bearing Identification No. ITBA/AST/S/156/2021-22/1034696486(1) passed against the petitioner quash the same.

For Petitioner : Mr.Arvind P Datar
Senior Counsel
for Mr.M.V.Swaroop

For Respondents : Ms.Hema Muralikrishnan
Senior Standing Counsel

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ORDER

Captioned writ petition and 'Writ Miscellaneous Petitions' ['WMPs' in plural and 'WMP' in singular for the sake of brevity and convenience] are listed in the admission Board before me i.e., in the Motion List under the cause list caption 'FOR ADMISSION'.

2. Mr.Arvind P Datar, learned Senior Advocate instructed by learned counsel Mr.M.V.Swaroop, counsel on record for writ petitioner is before this virtual Court.

3. Ms.Hema Muralikrishnan, learned Senior Standing counsel [Revenue counsel for the sake of convenience] accepted notice on behalf of both the respondents.

4. Owing to the narrow compass on which captioned writ petition turns, with the consent of learned counsel on both sides, main writ petition is taken up.

5. An 'Assessment order dated 06.08.2021 bearing reference ITBA/AST/S/143(3)/2021-22/1034696402(1)' [hereinafter 'impugned order' for the sake of convenience and clarity] has been called in question in the captioned writ petition, where the prayer is one for Certiorari.

6. Impugned order has been made under Section 143(3) of 'The Income Tax Act, 1961' [hereinafter 'IT Act' for the sake of brevity] read with 144B of IT Act. To be noted, Section 144B of IT Act kicked in on 01.04.2021.

7. Short point turns on Section 144B(1)(xvi)(b) read with 144B (7)(vii) as a 'Show Cause Notice dated 20.07.2021' [hereinafter 'first SCN' for the sake of brevity] was issued calling upon writ petitioner-assessee's response by 59 minutes post 23.00 hours on 26.07.2021, writ petitioner-assessee responded on 25.07.2021 requesting for two weeks time owing to voluminous records that have to be uploaded. Thereafter another 'Show Cause Notice dated 03.08.2021' [hereinafter 'second SCN' for the sake of brevity and clarity] came to be issued and writ petitioner-assessee responded to the same by uploading his response which included voluminous documents. To be noted, all this is borne out by records and there is no disputation or disagreement in this regard. Further to be noted, writ petitioner-assessee vide reply to second SCN had requested for a personal hearing also. Writ petitioner-assessee had also referred to the restriction qua number of attachments and sought permission to upload the response in tranches. For illustration, a typical screen shot from the official website is as follows:

e-Filing

View Response to Notice ID 100037143263

Proceeding Name	PAN	Assessee Name	Financial Year
Assessment Proceeding u/s 143(3)	AARCE6928K	ESTRA ENTERPRISES PRIVATE LIMITED	2017-18

Assessment Year	Document reference ID	Notice Section	Served on
2018-19	ITBA/AST/F/143(3)(SCN)/2021-22/1034608261(1)	143(3)	

Description
STBA]Show Cause Notice for Proceedings u/s 143(3)of Income Tax Act 1961.

Responses

+ Add New Response

Response/Remarks
Respected Sir, Please find enclosed herein our submission for show cause notice issued dated 03.08.2021 for your kind consideration. Due to restriction in attaching the number of attachments we are enclosing our Annexures in parts. Thanking you.

Response Submitted On
04-Aug-2021

Response Type
Full

Response Filed By
Self

Attachments

Annexure 2
Annexure_2.pdf

Annexure 3
Annexure_3.pdf

Annexure 5
Annexure_5.pdf

Annexure 6
Annexure_6.pdf

Annexure 10
Annexure_10.pdf

Reply Letter dated 04.08.2021
Reply_Letter_04082021.pdf

Annexure 1
Annexure_1.pdf

Annexure 4
Annexure_4.pdf

Annexure 7
Annexure_7.pdf

Annexure 11
Annexure_11.pdf

Acknowledgement

Response/Remarks
Respected Sir, Please find enclosed herein our submission for show cause notice issued dated 03.08.2021 for your kind consideration. Due to restriction in attaching the number of attachments we are enclosing our Annexures in parts. Thanking you.

Response Submitted On
04-Aug-2021

Response Type
Partial

Response Filed By
Self

Attachments

Acknowledgement

Acknowledgement

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8. This Court considers it unnecessary to burden this order with further details in this regard as it is abundantly clear that the writ petitioner-assessee has responded to the SCN and it also sought for a personal hearing. To be noted, there is no disputation or disagreement in this regard as alluded to supra.

9. Learned Senior counsel, thereafter, adverting to/taking this Court through the impugned order and more particularly paragraph 11 thereat, pointed out that the impugned order proceeds on the basis that neither a reply has been filed nor an adjournment has been sought. Paragraph 11 of the impugned order reads as follows:

> '11. In view of the above for making things more rational and meeting out the parameters of natural justice a draft assessment order elaborating each item of addition was issued on 20.07.2021. Date fixed for compliance was 26.07.2021. On the fixed date, neither any reply was submitted nor was any adjournment sought by the assessee. Again show cause notice dated 03.08.2021 along with Draft assessment order and computation sheet were issued to the assessee. Date fixed for compliance 05.08.2021. On the date fixed, neither any reply nor any adjournment was sought by the assessee. It shows that assessee has no valid explanation regarding additions proposed vide show cause notices dated 20.07.2021 and 03.08.2021 accordingly. On the basis of the show cause notices addition discussed in para 04 to 10 are being made.'
>
> (underlining made by this Court for ease of reference)

10. The above is clearly contrary to the undisputed fact scenario.

11. Be that as it may, it is submitted by learned Senior Counsel that above manifests itself as one of the facets of 'Natural Justice Principles' [NJP] and that facet is not considering the reply that has been sent by the writ petitioner-assessee. To buttress this submission, learned Senior counsel pressed into service Tin Box Company case being Tin Box Company, New Delhi Vs. Commissioner of Income Tax, New Delhi reported in 2001 9 SCC 725, which is also reported in (2001) 249 ITR 216 SC. This will be alluded to elsewhere infra in this order.

12. Learned Revenue counsel, who accepted notice on behalf of the respondents made three submissions and they are as follows:

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a) the question as to whether impugned assessment order should be under Section 144B, which kicked in on and from 01.04.2021 or under Section 143A (as it was, prior to 01.04.2021) may please be left open;

b) there is a statutory appeal available for the writ petitioner under Section 246A of IT Act.

c) Personal hearing is not there for the asking and it is at the discretion of Chief Commissioner or the Director General in-charge of Original Faceless Assessment Centre. In support of this contention, learned Revenue counsel drew the attention of this Court to Section 144B (7)(viii).

13. I now embark upon the exercise of considering the rival submissions, discussing the same and giving my dispositive reasoning for disposal of captioned writ petition.

14. With regard to the first submission of the Revenue counsel i.e., leaving open the question qua Section 144B/143 (3A), the request is acceded to as the same is neither relevant nor imperative to clinch the bone of contention in the case on hand.

15. The second point turns on the statutory appeal provision under Section 246A. I have repeatedly held that alternate remedy qua writ Court is a self-imposed restraint and it is not an absolute Rule. I have also repeatedly held that it has to be applied strictly in fiscal law Statute by respectfully following ratios of Hon'ble Supreme Court in a longline of authorities starting from (i) Assistant Collector of Central Excise, Chandan Nagar, West Bengal Vs. Dunlop India Ltd., and others reported in (1985) 1 SCC 260, (ii) United Bank of India Vs. Satyawati Tondon and others reported in (2010) 8 SCC 110 and (iii) Authorized Officer, State Bank of Travancore and another Vs. Mathew K.C. reported in (2018) 3 SCC 85. In this case, the point is whether it falls under any one of the exceptions to the alternate remedy restraint. The exceptions to the self imposed restraint have been adumbrated in Whirlpool Corporation Vs. Registrar of Trade Marks, Mumbai and others reported in (1998) 8 SCC 1 and the same was reiterated by Hon'ble Supreme Court in Harbanslal Sahnia and another Vs. Indian Oil Corporation Ltd., and others reported in (2003) 2 SCC 107.

16. Without entering upon elaboration qua adumbration of exceptions, it will suffice to say that a clear and indisputable violation of NJP is a certain exception to the Rule and the case

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on hand directly and squarely fits into this exception owing to the narrative set out thus far. In this regard, as already alluded to, Tin Box Company case law becomes relevant it comes to the aid of the writ petitioner in the case on hand owing to the factual matrix and the most relevant paragraph in Tin Box case law is paragraph 2, which reads as follows:

> '2.That the assessee could have placed evidence before the first appellate authority or before the Tribunal is really of no consequence for it is the assessment order that counts. That order must be made after the assessee has been given a reasonable opportunity of setting out his case. We, therefore, do not agree with the Tribunal and the High Court that it was not necessary to set aside the order of assessment and remand the matter to the assessing authority for fresh assessment after giving to the assessee a proper opportunity of being heard.'

17. The above buttresses the principle that in a given case of indisputable NJP violation i.e., aforementioned facet of NJP, availability of statutory appeal argument pales into insignificance.

18. With regard to the third point which turns on Section 144B(7)(viii), this Court refrains itself from expressing any opinion on the same at this point of time as I only propose to relegate the matter for assessment afresh after considering the writ petitioner-assessee's response, which has not been done qua the impugned order. Therefore, when the response of writ petitioner-assessee is considered, it will include considering the writ petitioner-assessee's request for a personal hearing. This much clarity will suffice and any further elaboration would be unnecessary as that would only burden this order with particulars that are not imperative for appreciating this order.

19. In the light of the narrative discussion and dispositive reasoning set out thus far, the following order is passed:

> a) Impugned Assessment order dated 06.08.2021 bearing reference ITBA/AST/S/143(3)/2021-22/1034696402 (1) is set aside solely on the ground of non adherence to statutorily ingrained NJP principle;
>
> b) A sequittur to the previous directive (though obvious) is, this Court has not expressed any opinion or view on the merits of the matter leaving open all the questions to be decided by Assessing Authority in the de novo exercise;

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c) De nova assessment exercise shall be commenced by 01.09.2021 and completed as expeditiously as the business of the assessment mechanism would permit and in any event within eight(8) weeks from 01.09.2021 i.e., on or before 27.10.2021.

20. Captioned writ petition is disposed of with the above directives. There shall be no order as to costs. Consequently, connected WMPs are also disposed of as closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

kmi

To

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

2. National Faceless Assessment Centre,
Income Tax Department,
Ministry of Finance,
Government of India, Delhi.

+1cc to M/s.Hema Muralikrishnan, Advocate, S.R.No.43245

W.P.No.17709 of 2021 and
WMP.Nos.18874 & 18875 of 2021

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