IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 06.09.2021

CORAM

THE HONOURABLE MR.JUSTICE M.SUNDAR

W.P.NO.18620 OF 2021
&
W.M.P.NO.19853 &19856 OF 2021

M/s.Khivraj Automobiles & Infrastructure Private Limited,
Represented by its Director, Mr.Bharath Kumar Chordia,
No.4, ABM Avenue, Boat Club Road,
R.A. Puram, Chennai, Tamil Nadu - 600028
... 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(2),
121, Mahathma Gandhi Road,
Numgambakkam,
Chennai. ... Respondents

PRAYER:- Writ petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari calling for the records comprised in the impugned order bearing No. ITBA/AST/S/143(3)2021-22/1034598174(1) dated 03.08.2021 passed by the first respondent under Section 143(3) read with sections 144B of the Income Tax Act, 1961 for the Assessment year 2018-19 and quash the same.

For Petitioner : Mr.N.V.Balaji

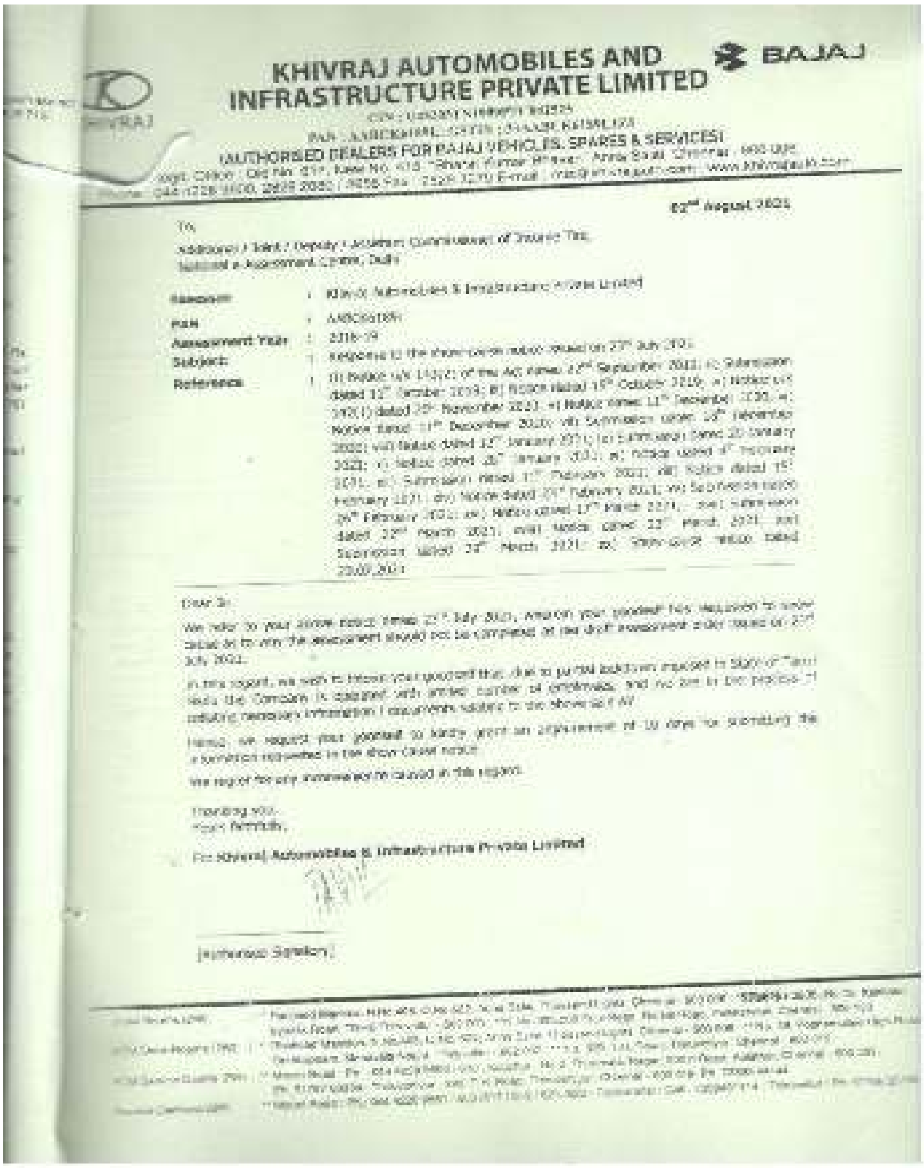
For Respondent : Ms.Hema Muralikrishnan
Senior Standing counsel
For R1 & R2

ORDER

Captioned writ petition is before me in the admission Board in the Virtual Court.

2. Mr.N.V.Balaji, learned counsel for the lone writ petitioner is before this Virtual Court. Learned counsel submits that an Assessment Order made under Section 143(3) read with section 144B of 'The Income-tax Act, 1961 (43 of 1961)' ['IT Act' for the sake of convenience and clarity] has been called in question in the captioned writ petition.

3. Learned counsel went on to submit that a 'show-cause notice dated 23.07.2021' ('SCN' for the sake of brevity) was noticed in the portal by the writ petitioner on 02.08.2021 and the writ petitioner immediately opted for 'seek adjournment' facility. Learned counsel has also followed it up with a letter dated 02.08.2021, scanned reproduction of the letter and a screen shot of the 'seek adjournment' option that was opted by the writ petitioner are as follows:



KHIVRAJ AUTOMOBILES AND INFRASTRUCTURE PRIVATE LIMITED

BAJAJ

(AUTHORISED DEALERS FOR BAJAJ VEHICLES, SPARES & SERVICES)

02nd August 2021

To,

Assessment Year : 2018-19

Subject :

Reference :

Dear Sir,

Thanking you,

Yours faithfully,

For Khivraj Automobiles & Infrastructure Private Limited

(Authorised Signatory)

Assessment Proceeding u/s 143(3) AABCK[illegible]

KHIVRAJ AUTOMOBILES & INFRASTRUCTURE PRIVATE LIMITED 2017-18

2018-19 ITBA/AST/F/143(3)/SCN/2021-22/1034[illegible](1) 143(3)

[illegible] Show Cause Notice for Proceedings u/s 143(3) of Income Tax Act 1961

Responses

Dear Sir, Due to partial lockdown imposed in State of Tamil Nadu the Company is operated with limited number of employees and we are in the process of collating necessary information / documents relating to the above said Act. Hence, we request your goodself to kindly grant an adjournment of 10 days for submitting the information requested in the show cause notice. Yours Faithfully Khivraj Automobile & Infrastructure Private Limited 02-Aug-2021 Partial

Self

Attachments

[illegible]

4. Learned counsel submits that the very next day i.e, on 03.08.2021, the main Assessment Order came to be passed, the quantum is in the region of 2.56 crores and the assessment year is 2018-19.

5. Notwithstanding very many averments and grounds made in the writ affidavit, learned counsel for writ petitioner made a pointed submission and that pointed submission was, an opportunity, as ingrained in Section 144B, has not been given to the writ petitioner though there is what is described as a 'variation'.

6. Owing to the short point and very acute angle on which captioned writ petition turns, with the consent of learned counsel for writ petitioner Mr.N.V.Balaji and Ms. Hema Muralikrishnan, learned Senior Standing Counsel, who accepted

notice on behalf of both the respondents, main writ petition is taken up.

7. Section 144B(1)(xvi)(b) and Section 144B(7)(vii) are of relevance and the same read as follows:

'Section 144B(1)(xvi)(b)

144B (1) Notwithstanding anything to the contrary contained in any other provisions of this Act, the assessment under sub-section (3) of section 143 or under section 144, in the cases referred to in sub-section (2), shall be made in a faceless manner as per the following procedure, namely:—

(i) ....
(ii) ....
(iii) ....
(a) ......
(b) ......
(c) ......
(iv) ....
(v) ....
(a) ......
(b) ......
(c) ....
(vi) ....
(vii)........
(viii).......
(ix) ....
(x) ....
(xi) ....
(xii) ....
(xiii).........
(xiv).........
(xv) ....

(xvi) the National Faceless Assessment Centre shall examine the draft assessment order in accordance with the risk management strategy specified by the Board, including by way of an automated examination tool, whereupon it may decide to—

(a) ....

(b) provide an opportunity to the assessee, in case any variation prejudicial to the interest of assessee is proposed, by serving a notice calling upon him to show cause as to why the proposal variation should not be made; or'

' Section 144B(7)(vii):

144B (7) For the purposes of faceless assessment—

(i) ....
(a) ....
(b) ....
(ii) ....
(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.'

8. From 'opportunity to show cause' qua variation being ingrained in the very provision (albeit read with Section 143(3) of IT Act) under which impugned assessment order has been made, it is clear as daylight that in the case on hand there is a breach of the aforementioned provisions

9. Therefore, the captioned writ petition is disposed of by passing the following order:

a) Impugned order dated dated 03.08.2021 bearing reference ITBA/AST/S/143(3(/2021-22/1034598174(1) is set aside solely on the ground that opportunity to show cause qua variation has not been given to the writ petitioner though SCN has been issued.

b) As a sequitur to the previous directive, it is made clear that no opinion or view on the merits of the matter is expressed in this order.

c) The writ petitioner shall send its objections/ explanation as expeditiously as possible and in any event within a fortnight from today i.e., by 20.09.2021.

d) The assessment shall thereafter be completed as expeditiously as the business of the respondent would permit and in any event within six weeks therefrom i.e., by 01.11.2021.

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

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

gpa

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(2),
121, Mahathma Gandhi Road,
Numgambakkam,
Chennai.

+1cc to Mr.N.V.Balaji, Advocate, S.R.No.45318
+1cc to Ms.Hema Muralikrishnan, Advocate, S.R.No.44814

W.P.NO.18620 OF 2021 &
W.M.P.NO.19853 &19856 OF 2021

KSM(CO)
PBS/16/09/2021