IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.09.2021

CORAM

THE HONOURABLE MR.JUSTICE M.SUNDAR

W.P.No.19978 of 2021
and
W.M.P.No.21234 of 2021

M/s Bharani Hospitals Private Limited,
Rep. By its Director,
Dr.Bharani R.Paluvai,
22,Arcot Road, Saligramam,
Chennai - 600 093. ...Petitioner

Vs

1. The Income Tax Officer,
Corporate Ward 1 (2),
121, MG Road, Nungambakkam,
Chennai - 600 034.

2. The Income Tax Officer,
Corporate Ward 1 (1),
121, MG Road, Nungambakkam,
Chennai - 600 034. ...Respondents

Prayer: Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus calling for the records of the respondents contained in its notice dated 24.03.2015, issued by the Respondent No.1 under Section 148 of the Income Tax Act, 1961, for PAN : AAACB2392P, for assessment year 2010-11, and all proceedings in furtherance thereof, including the order in DIN and Letter No.ITBA/AST/F/17/2021-22/1034235248(1), dated 15.07.2021 passed by the Respondent No.2 for PAN: AAACB2392P, dismissing the Petitioner's objections to the reopening of income tax assessment for the Assessment Year 2010-11, and to quash the same as arbitrary, illegal and unjust, and to consequently forbear the Respondents or its superiors, subordinates, agents, etc from re-assessing the Petitioner's income for the assessment year 2010-11 under Section 147 of the Income Tax Act, 1961.

For Petitioner : Ms.Amritha Sathyajith

For Respondents : Ms.Hema Muralikrishnan,
Senior Standing Counsel

ORDER

Ms.Amritha Sathyajith, learned counsel for the sole writ petitioner cc and Ms. Hema Muralikrishnan, learned Senior Standing Counsel (Revenue counsel) on behalf of both respondents are before this virtual court, with the consent of the learned counsel on both sides, main writ petition is taken up.

2. Read this in conjunction with and in continuation of earlier proceedings made by this Court in the captioned matter in previous listing on 20.09.2021, which reads as follows:

> 'An order dated 15.07.2021 bearing reference No.ITBA/AST/F/17/2021-22/1034235248(1) qua assessment year 2010-2011 bearing an order under 'The Income-tax Act,1961 (43 of 1961)' [hereinafter 'IT Act' for the sake of brevity] has been called in question.
>
> 2. The short point in vide earlier order dated 18.12.2020 made in W.P.No.15212 of 2016, a Hon'ble Single Judge of this Court had directed the second respondent to afford personal hearing (owing to the peculiar nature of the facts and circumstances of the case) and then make an order, but the impugned order has been made without giving a personal hearing is learned counsel's say.
>
> 3. Ms.Hema Muralikrishnan, learned Revenue counsel who accepts notice on behalf of both the respondents requests for some time to ascertain if the personal hearing was granted at all.
>
> 4. Learned counsel for writ petitioner submits that in the interregnum if final assessment order is passed pursuant to the impugned order an irreversible situation will arise. Therefore, let the impugned order be kept in abeyance till the next listing.
>
> 5. Registry to show the name of the learned Revenue counsel in the next listing.
>
> 6. List under the cause list caption 'ADJOURNED ADMISSION' one week hence. List on 27.09.2021.'

3. The above earlier proceedings is tell tale and it also

captures the crux and gravamen of the lis in a nutshell. To be noted, the earlier proceedings narrows down the issue in the captioned writ petition to one point and that one point is whether the writ petitioner was given personal hearing in accordance with the directives of this Court vide order dated 18.12.2020 in W.P.No.15212 of 2016.

4. Today, on instructions (written instructions), learned Revenue counsel submits that personal hearing has not been given to the writ petitioner. This draws the curtains on the captioned matter.

5. However, before disposal of the captioned writ petition, it is made clear that this order shall not be construed to mean that personal hearing is statutorily imperative in matters of this nature. In the case on hand, another Hon'ble Single Judge vide aforementioned order dated 18.12.2020 made in W.P.No.15212 of 2016 has thought fit and appropriate to afford an opportunity of personal hearing to the writ petitioner that order has been given legal quietus and has attained finality. Therefore, that has to be honoured in letter and spirit.

6. In the light of the narrative thus far, the impugned order is set aside on the ground that personal hearing has not been granted in accordance with the earlier directives made by another learned Single Judge, captioned matter is disposed of by making the following order:

a) impugned order being order dated 15.07.2021 in DIN & Letter No.ITBA/AST/F/17/2021-22/1034235248(1) for the assessment year 2010-2011 is set aside on the ground that personal hearing has not been afforded to the writ petitioner as per order dated 18.12.2020 made in W.P.No.15212 of 2016;

b) as a sequitur to the previous directive, though obvious, it is made clear that no opinion or view is expressed on merits of the matter as the impugned order is set aside on the sole ground that personal hearing has not been granted to the writ petitioner in accordance with the earlier directives;

c)By consent of both sides, personal hearing is now fixed on 06.10.2021 (Wednesday) in the afternoon at 3.00 p.m. in the office of the second respondent;

d) the second respondent shall re-do the exercise i.e., de-novo. This de-novo exercise shall be commenced and concluded as expeditiously as official business of the second respondent would permit but in any event within 12 weeks from today i.e., on or before 20.12.2021.

7. Captioned writ petition is disposed of with the above directives. Consequently, W.M.P. is disposed of as closed. There shall be no order as to costs.

Sd/-
Assistant Registrar(CS-V)

//True Copy//

Sub Assistant Registrar

mmi/ssm

To

1. The Income Tax Officer,
   Corporate Ward 1 (2),
   121, MG Road, Nungambakkam,
   Chennai - 600 034.

2. The Income Tax Officer,
   Corporate Ward 1 (1),
   121, MG Road, Nungambakkam,
   Chennai - 600 034.

+1cc to Mr.Suhrith Parthasarathy, Advocate, S.R.No.49875/21

+1cc to M/s.Hema Muralikrishnan, Advocate, S.R.No.50147/21

W.P.No.19978 of 2021

RLD(CO)
RGA(26/10/2021)