IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.10.2021

CORAM

THE HON'BLE MR.JUSTICE M.SUNDAR

W.P.NO.21961 OF 2021
AND
W.M.P.NO.23167 OF 2021

Latha C.Mohan
130/A (209/A) SABA House,
St.Mary's Road, Alwarpet,
Chennai - 600 018. ... Petitioner

.Vs.

1. The Additional/Joint/Deputy/Assistant Commissioner/
 Income Tax Officer of Income tax,
 National Faceless Assessment Centre
 Mayur Bhawan, Connaught Lane,
 Barakhamba, New Delhi - 110 001.

2. The Assistant Commissioner of Income tax
 Corporate Circle-6(1)
 Room No-703, 7th Floor,
 Chennai - Wanarpathy Block,
 No.121, Mahathma Gandhi Road,
 Nungambakkam, Chennai,
 Tamil Nadu - 34. ... Respondents

PRAYER:-

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records on the file of the first respondent herein in order dated 14.09.2021 bearing DIN.ITBA/AST/S/147/2021-22/1035563080(1) and consequently, quash the same, remand the matter back to the 1st respondent to redo the assessment with a direction to provide an opportunity of personal hearing.

For Petitioner : Mr.K.Senguttuvan

For Respondents : Mr.A.P.Srinivas
 Senior Standing Counsel
 For Income Tax

O R D E R

Captioned main writ petition has been filed assailing an 'assessment order dated 14.09.2021 bearing reference No.ITBA/AST/S/147/2021-22/1035563080(1)' [hereinafter 'impugned order' for the sake of convenience, clarity and brevity] pertaining to 'assessment year 2015-2016' [hereinafter 'said AY' for the sake of convenience and clarity] qua writ petitioner.

2. To be noted, the impugned order has been made under Section 147 read with Section 144 and Section 144B of 'The Income-tax Act, 1961 (43 of 1961)' [hereinafter 'IT Act' for the sake of brevity].

3. Though very many points have been raised in the writ affidavit and very many grounds have been urged in the writ affidavit, Mr.K.Senguttuvan, learned counsel for writ petitioner, in the Admission Board submits that 'show cause notice' ['SCN'] is dated 06.09.2021, it calls upon the writ petitioner/Assessee to respond by 59 minutes past 23 hours of 10.09.2021. The SCN has been digitally signed on 06.09.2021 at 15:11 hours which means past 3.00 p.m. in the evening. This means that SCN should have been uploaded only after 11 minutes past 3 on 06.09.2021. Effectively, four full days have been given to writ petitioner and of these four full days, 10.09.2021 is a holiday on account of Vinayagar Chathurthi resulting in only three working days being given to writ petitioner. It is contended that this time is too short. However, writ petitioner has ultimately sent a reply on 14.09.2021, but the impugned order i.e., impugned assessment order has been made on the same day i.e., 14.09.2021 without considering the writ petitioner's reply to SCN dated 06.09.2021.

4. Mr.A.P.Srinivas, learned Senior standing counsel accepts notice on behalf of both respondents.

5. Owing to the short point on which the captioned writ petition is now to be disposed of, main writ petition was taken up with the consent of learned counsel on both sides.

6. Learned Revenue counsel submits that writ petitioner has not even filed her returns. This Court considers it appropriate to not to go into those aspects of the matter at this stage, as this Court is of the view that time given for responding to SCN being only three working days, writ petitioner, having sent a reply and the impugned order having been passed on the same day without reference to the reply, it would be appropriate to direct the first respondent to redo the assessment from SCN stage by taking into account the reply of writ petitioner dated

14.09.2021. To be noted, this is done on the peculiar facts of this case leaving open the question as to whether 3 days time is too short or good enough.

7. In the light of the narrative thus far, captioned Writ Petition is disposed of, by making the following order:

(a) The impugned order being order dated 14.09.2021 bearing reference No.ITBA/AST/S/147/2021-22/1035563080(1) is set aside solely on the ground that it has been passed without considering the reply of writ petitioner i.e., reply dated 14.09.2021;

(b) Owing to the above limb of the order, though obvious, it is made clear that this Court has not expressed any view or opinion on the merits of the matter;

(c) The first respondent shall now redo the assessment from SCN stage i.e., from the stage of SCN dated 06.09.2021, by considering the writ petitioner's reply dated 14.09.2021 and pass assessment orders afresh as expeditiously as the business of first respondent would permit and in any event, within three weeks from today i.e., on or before 10.11.2021;

(d) Though obvious, the assessment de novo shall be done on its own merits and in accordance with law, as no opinion or view qua challenge to impugned assessment order has been expressed in the captioned writ petition;

Captioned Writ Petition is disposed of with the aforementioned directives. Consequently, connected miscellaneous petition is disposed of as closed. There shall be no order as to costs.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

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To

1. The Additional/Joint/Deputy/Assistant Commissioner/
   Income Tax Officer of Income tax,
   National Faceless Assessment Centre,
   Mayur Bhawan, Connaught Lane,
   Barakhamba, New Delhi - 110 001.

2. The Assistant Commissioner of Income tax
   Corporate Circle-6(1),
   Room No-703, 7th Floor,
   Chennai - Wanarpathy Block,
   No.121, Mahathma Gandhi Road
   Nungambakkam, Chennai,
   Tamil Nadu - 34.

+1cc to Mr.A.P.Srinivas, Advocate, S.R.No.53775
+1cc to Mr.K.Senguttuvan, Advocate, S.R.No.53685

W.P.NO.21961 OF 2021 AND
W.M.P.NO.23167 OF 2021

MG(CO)
PBS/15/11/2021