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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.10.2021

CORAM

THE HON'BLE Mr.JUSTICE M.SUNDAR

W.P.No.22050 of 2021
and
W.M.P.No.23267 of 2021

M/s.Guptha Gem Jewellers
Represented by its Partner R.Manivannan,
56, Bazaar Street,
Gobichettipalayam-638 452,
Erode District.
PAN No:AACFG0494J

... Petitioner

-Vs.-

1. The Income Tax Officer,
National e-Assessment Centre,
Income Tax Department,
Ministry of Finance,
Room No.401, 2nd Floor, E-Ramp,
Jawaharlal Nehru Stadium,
Delhi-110 003.

2. The Income Tax Officer,
Ward 2(1), Erode.

... Respondents

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 his proceedings in DIN:ITBA/AST/S/147/2021-22/1035884705(1), quash the assessment order 25.09.2021 passed therein for the assessment year 2017-18.

For Petitioner : Mr.N.L.Ramani, Senior Advocate for Mr.B.Raveendran

For Respondents : Mr.A.P.Srinivas Senior standing counsel

O R D E R

In the captioned main writ petition an 'Assessment Order being order dated 25.09.2021 bearing reference DIN:ITBA/AST/S/147/2021-22/1035884705(1)' [hereinafter 'impugned order' for the sake of convenience and clarity] has been assailed.

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2. The aforementioned impugned order has been made under Section 147 read with Sections 144 and 144B of 'The Income Tax Act, 1961 (43 of 1961)' [hereinafter 'IT Act' for the sake of convenience and clarity]. It pertains to 'Assessment Year 2017-18' [hereinafter 'said AY' for the sake of brevity] qua writ petitioner.

3. Notwithstanding very many averments in the writ affidavit and very many grounds urged in the writ affidavit, Mr.R.L.Ramani, learned senior counsel appearing on behalf of counsel on record for writ petitioner drew the attention of this Court to 'Show Cause Notice' ['SCN'] dated 23.09.2021 which is made under Section 144 of IT Act. This SCN has been digitally signed at 16:14:43 IST (Indian Standard Time). Paragraph 6 of this SCN reads as follows:

> '6. Kindly submit your response through your registered e-filing account at www.incometax.gov.in by 23.59 hours of 24/09/2021.'

4. Assuming that the SCN was uploaded immediately on being digitally signed, writ petitioner has been given barely 31 hours to respond. This is extremely short and the writ petitioner could not respond is learned senior counsel's say. On instruction, learned senior counsel submits that it will suffice if the writ petitioner is permitted to now send a reply to the SCN and if the first respondent is directed to redo the assessment after taking into account the writ petitioner's response to the SCN. In other words, it will suffice if the matter is sent back to first respondent with a directive to redo the assessment from SCN stage.

5. Mr.A.P.Srinivas, learned senior standing counsel accepts notice on behalf of both the respondents. Learned Revenue counsel submits that aforementioned SCN was preceded by several notices and the writ petitioner had not responded to the same. More importantly, adverting to second proviso to Section 144 of IT Act, learned Revenue counsel submits that it is not necessary to give opportunity in cases where a notice under Sub-section (1) of Section 142 has been issued prior to making of an assessment under this Section. It may not be necessary to go into this aspect of the matter owing to paragraph 6 of SCN, which has been extracted and reproduced supra. In other words, first respondent in his wisdom has chosen to give an opportunity to the writ petitioner to respond to SCN. If SCN has been issued and an opportunity has been given, it should be an opportunity in every sense of the term. It should be an opportunity in letter and spirit.

6. This Court has no difficulty in accepting the submission of learned Senior counsel that the opportunity is virtually not an opportunity as even if the SCN has been uploaded immediately on being digitally signed on 23.09.2021 at 16 minutes past 4 pm qua writ petitioner-Assessee would

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have had barely 31 hours to respond. To be noted, this is in the light of facts, circumstances and issues involved in the case on hand.

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7. To be noted, if the first respondent had chosen to say that writ petitioner is not entitled to an opportunity owing to earlier 142(1) notice and the writ petitioner not responding to the same, the dynamics and dimensions of this matter may well have been very difficult. As that is not the case, this Court does not consider it necessary to examine such a situation.

8. Suffice to say that first respondent has chosen to give an opportunity, but the opportunity is hardly an opportunity in any sense of the term owing to the narrative thus far.

9. In the light of the short point and narrow compass on which the captioned main writ petition turns, with the consent of the learned counsel on both sides, captioned main writ petition was taken up though captioned writ petition is in the Admission Board.

10. The following order is passed:

(a) Impugned assessment order being order dated 25.09.2021 baring reference DIN:ITBA/AST/S/147/2021-22/1035884705(1) qua said AY pertaining to writ petitioner is set aside solely on the ground that SCN under Section 144 of IT Act has been issued on 23.09.2021 post quarter past 4 pm and has called upon writ petitioner-Assessee to send its response through registered e-filing account by 59 minutes post 23 hours on 24.09.2021;

(b) In the light of the aforementioned limb of this order, though obvious, for the purpose of specificity, it is clarified that this Court has not expressed any view or opinion on the merits of the matter;

(c) First respondent shall now proceed with the assessment from the SCN stage i.e., SCN dated 23.09.2021 under Section 144 of IT Act and re-do the assessment;

(d) Writ petitioner shall send its response to the SCN dated 23.09.2021 through registered e-filing account within one week from today i.e., on or before 27.10.2021;

(e) First respondent shall take into account the writ petitioner's response to SCN and re-do the assessment i.e., commence the de novo assessment and

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complete/conclude the same within three(3) weeks therefrom, i.e., on or before 17.11.2021.

11. Captioned main Writ Petition is disposed of with the above directives. Therefore, WMP.No.23267 of 2021 is disposed of as closed. There shall be no order as to costs.

Sd/-

Assistant Registrar (CS-V)

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Sub Assistant Registrar

nsa/kmi

To

1. The Income Tax Officer,
National e-Assessment Centre,
Income Tax Department,
Ministry of Finance,
Room No.401, 2nd Floor, E-Ramp,
Jawaharlal Nehru Stadium,
Delhi-110 003.

2. The Income Tax Officer,
Ward 2(1)
Erode.

+1cc to Mr.A.P.Srinivas, Advocate, S.R.No.53774
+1cc to Mr.B.Raveendran, Advocate, S.R.No.54302

W.P.No.22050 of 2021
and
W.M.P.No.23267 of 2021

GJ(CO)
GN(29/10/2021)

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