IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.10.2021

CORAM

THE HON'BLE Mr.JUSTICE M.SUNDAR

W.P.No.22396 of 2021
and
W.M.P.Nos.23647 and 23649 of 2021

Shree Vasavi Jewellery
(Rep.by its Partner)
1076, Big Bazaar Street,
Coimbatore-640 001.
PAN:ABJFS0578H ...Petitioner

-Vs-

1. The Assistant Commissioner of Income Tax
   National Faceless Assessment Centre, Delhi
   Room No.401, 2nd Floor,
   E-Ramp, Jawaharlal Nehru Stadium,
   Delhi-110 003.

2. The Income Tax Officer,
   Non Corporate Ward-1(4),
   Income Tax Department,
   63, Race Course Road,
   Coimbatore-641 018.

3. The Principal Commissioner of Income Tax-1,
   Income Tax Department,
   63, Race Course Road,
   Coimbatore-641 018. ... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, to call for the records of the writ petitioner partnership firm on the file of the first respondent to quash the impugned order dated 17.09.2021 passed u/s 147 r.w.s 144B of the Act for the Assessment year 2013-14 in ITBA/AST/S/147/2021-22/1035669325(1) and consequently direct the first respondent to complete the fresh assessment for the assessment year 2013-14 after granting reasonable/ sufficient opportunity of hearing.

For Petitioner : Mr.A.S.Sriraman

For Respondents : Mr.A.P.Srinivas
Senior standing counsel
for Income Tax

O R D E R

Mr.A.S.Sriraman, learned counsel on record for sole writ petitioner is before this virtual Court.

2. Learned counsel for writ petitioner submits that an 'assessment order dated 17.09.2021 bearing reference DIN ITBA/AST/S/147/2021-22/1035669325(1)' [hereinafter 'impugned order' for the sake of convenience and clarity] for assessment year 2013-14 qua writ petitioner has been assailed in the captioned main writ petition.

3. Adverting to the impugned order, learned counsel for writ petitioner submits that the same has been made under Section 147 read with 144B of 'The Income-tax Act, 1961 (43 of 1961)' [hereinafter 'IT Act' for the sake of brevity]. To be noted, Section 144B of IT Act is Faceless Assessment. Learned counsel for writ petitioner, adverting to a 'show cause notice dated 15.09.2021 bearing reference DIN:ITBA/AST/F/147(SCN)/2021-22/1035605403(1)' [hereinafter 'said SCN' for the sake of convenience and clarity] submits that the said SCN which preceded the impugned order, as variation was proposed grants barely a day's time to writ petitioner-assessee to respond. A perusal of last page of said SCN reveals that it has been digitally signed on 15.09.2021 at 11 minutes and 33 seconds past 19 hours IST, but vide paragraph No.3 of said SCN, writ petitioner/Assessee has been called upon to submit response through email filing account by 23.59 hours on 16.09.2021. Assuming the said SCN was uploaded immediately on being digitally signed, writ petitioner at the highest has been given barely a day's time. Learned counsel for writ petitioner submits that considering the nature of proposed variation, this is very little time and in fact is no time at all and therefore, writ petitioner could not respond. This is an infraction of the procedure for assessment order under Section 144 B of IT Act and therefore, infarct qua impugned order inter-alia on the ground of violation of 'Natural Justice Principle' ['NJP'] is learned counsel's say.

4. Mr.A.P.Srinivas, learned Senior standing counsel for Income Tax, accepts notice on behalf of all the three respondents.

5. On instructions, learned Senior standing counsel submits that there is no infirmity with the said SCN.

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

7. The issue is, not infirmity qua said SCN, but it is a question of reasonable time not being granted qua said SCN. In the light of narrative thus far, considering the facts and circumstances of the case on hand i.e., nature of proposed variation, this Court is of the view that this is a fit case to afford an opportunity to writ petitioner by sending the matter back to Assessing Authority with a directive to proceed from said SCN stage as time to respond is clearly inadequate causing NJP infraction.

8. Captioned writ petition is disposed of by making the following order:

(a) Impugned order being order dated 17.09.2021 bearing reference DIN ITBA/AST/S/147/2021-22/1035669325 (1) is set aside solely on the ground that barely one day time has been given for objections qua proposed variation vide SCN dated 15.09.2021. In other words, the impugned order is set aside solely for the purpose of facilitating reasonable time (to respond to SCN) being granted to writ petitioner;

(b) The sequitur to previous limb of this order is (though obvious) this Court has not expressed any view or opinion on the merits of the matter;

(c) Assessing Authority shall now proceed from the SCN stage i.e., SCN dated 15.09.2021 bearing reference DIN:ITBA/AST/F/147(SCN)/2021-22/1035605403(1).

(d) Time for the writ petitioner to respond to said SCN is one week from today. In other words, writ petitioner shall send their response through registered e-filing account at www.incometax.gov.in on or before 01.11.2021;

(e) Though obvious, it is open to the writ petitioner to ask for personal hearing, if the writ petitioner chooses to do so;

(f) If the writ petitioner chooses to ask for personal hearing the request shall be dealt with on its own merits;

(g) Assessing Authority shall consider the writ petitioner's response to said SCN, do the assessment de novo and pass assessment orders within four weeks from 01.11.2021 i.e., on or before 29.11.2021;

9. Captioned main Writ Petition is disposed of with the aforesaid directives. Consequently, captioned writ miscellaneous petitions are disposed of as closed. There shall be no order as to costs.

Sd/-
Deputy Registrar (CS)

//True Copy//

Sub Assistant Registrar

nsa/mk

To

1. The Assistant Commissioner of Income Tax
National Faceless Assessment Centre, Delhi
Room No.401, 2nd Floor,
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Income Tax Department,
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+1CC to Mr.A.P.Srinivas, Advocate, Sr.No.54983

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CP (CO)
K.RK. (17.11.2021)