IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.10.2021

CORAM

THE HON'BLE MR.JUSTICE M.SUNDAR

W.P.NO.23071 OF 2021
AND
W.M.P.NO.24285 OF 2021

Swapna Manuel
20/26, Perumal Kovil Street
Taramani, Chennai-600 113.

...Petitioner

-Vs.-

The Assistant Commissioner of Income tax
Central Circle 2(3), Room No.B-5, 'B' Wing
Investigation Building, No.46, Mahatma Gandhi Road,
Nungambakkam, Chennai-600 034.

... Respondent

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, to call for the records of the respondent in the assessment order bearing Identification No.ITBA/AST/M/147/2021-22/1036026053(1) dated 29.09.2021 in pan No.BNNPS8194L passed in my case for AY 2016-2017, quashing the same.

For Petitioner : Mr.M.V.Swaroop

For Respondent : 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 29.09.2021 made under Section 144 read with Section 147 of 'The Income-tax Act, 1961 (43 of 1961)' [hereinafter 'IT Act' for the sake of brevity] pertaining to 'Assessment year 2016-2017' [hereinafter 'said AY' for the sake of convenience and clarity] qua writ petitioner. This assessment order shall hereinafter be referred to as 'impugned order' for the sake of convenience and clarity.

2. Notwithstanding very many averments and several grounds raised in writ affidavit filed in support of captioned main writ petition, Mr.M.V.Swaroop, learned counsel for writ petitioner submitted that the impugned order was preceded by a 'show cause notice dated 24.09.2021 bearing reference DIN & Notice No.ITBA/AST/F/142(1)/2021-22/1035876104(1)' [hereinafter 'said SCN' for the sake of convenience and clarity]. To be noted, said SCN has been issued under Section 142(1) of IT Act. Learned counsel submits that said SCN is dated 24.09.2021, it has been digitally signed at 8 minutes past 08.00 p.m. on 24.09.2021 and it calls upon the writ petitioner/Assessee to furnish information on the points or matters specified therein on or before 3 minutes past 11.00 a.m. on 27.09.2021. Learned counsel points out that 24.09.2021 was Friday and 27.09.2021 was obviously, Monday. Effectively in terms of working days, even if 9.00 a.m. on 27.09.2021 Monday morning is taken as reckoning date and time, writ petitioner had barely 2 hours and 3 minutes to respond to said SCN. In the light of the importance of this point that is urged, this Court deems it appropriate to extract and reproduce the said SCN and the same is as follows:

GOVERNMENT OF INDIA
MINISTRY OF FINANCE
INCOME TAX DEPARTMENT

To,
SWAPNA MANUEL
20/26, PERUMAL KOVIL STREET TARAMANI
600113, Tamil Nadu
India

PAN:	AY:	Date:	DIN & Notice No:
BNNPS8194L	2016-17	24/09/2021	ITBA/AST/F/142(1)/2021-22/1035876104(1)

Notice under sub-section (1) of Section 142 of the Income Tax Act, 1961

Sir/ Madam/ M/s.

In connection with the assessment for the assessment year **2016-17**, you are required to

a) Furnish or cause to be furnished on or before **27/09/2021** at **11:03 AM** the accounts and documents specified overleaf.

b) Furnish and verified in the prescribed manner under Rule 14 of I.T. Rules 1962 the information called for as per annexure and on the points or matters specified therein on or before **27/09/2021** at **11:03 AM**.

c) The above mentioned accounts/documents/information is to be furnished online electronically in 'E Proceeding' facility through your account in 'e-filing' website of Income Tax Department.

d) Para (c) (a) to (c) are applicable if you have an account in e-filing website of Income Tax Department. If no such an account is created by you, assessment proceedings shall be carried out either through your e-mail account or manually (if e-mail is not available).

e) In cases where order has to be passed under section 153A/153C of the Income Tax Act, 1961 read with section 143(3), assessment proceedings would be conducted manually.

Yours faithfully

H. MAHENDRAN
CENTRAL CIR 2(3) CHENNAI

Note: If digitally signed, the date of digital signature may be taken as date of document.
ROOM NO. ..., 1ST FLOOR, INVESTIGATION BUILDING, INVESTIGATION BUILDING, NO.46 (OLD NO.125), MAHATMA GANDHI ROAD, CHENNAI, Tamil Nadu, 600034
Email: CHENNAI.DCIT.CENC.2(3)@INCOMETAX.GOV.IN, Office Phone: [illegible]

Note: The address of the website of the e-filing portal has been changed from www.incometaxindiaefiling.gov.in to www.incometax.gov.in
*DIN - Document Identification Number

ANNEXURE

- Notice u/s 148 for the A.Y 2016-17 was issued on 31/03/2021. But no compliance has been received by this office till date.
- Nature of business/manufacturing activity of the Company/Firm/Proprietary/business in which you are a Director/Partner/Proprietor
- Address of business premises, Branch Office, Factory and Godown if any:
- Signed Copies of P & L account, Balance Sheet and schedule forming part of annual account, statement of total income for the year under scrutiny and for earlier 2 previous years; Pl also furnish books of accounts in hard copy;
- Form 26AS
- Audited Form 3CD/3CB report along with Auditor's report and Notes on accounts including Significant Accounting Policies; Details of the observations of the auditors on any adjustments which affected the profit;
- Details of bank accounts held by you as on date along with its Account Number and Branch details. A copy of bank statement for the year under scrutiny
- Details of immovable property held by you as on date, Please provide the copies of deeds
- Details of movable assets and investments held by you as on date;
- Details of assets purchased during the previous year
- Details of party wise contract receipts and other receipts during the year
- It is seen from the bank statements that there are receipts to the tune of Rs. 32.36 crores. Please explain
- During the previous year you have received contract from M/s Good Earth Properties and M/s Provident Housing Ltd. Please give the details of work done along with documentary evidence
- . Details of party wise payments made along with details of TDS deducted on the same. Proof for remittance of TDS.
- Please provide the work order and details.
- Your reply, if any, in this regard should reach this office on or before **27.09.2021**. In the absence of any reply, it will be presumed that you do

not have anything to submit against the queries raised. Accordingly the assessment will be completed on the basis of materials available on record.

[illegible] MAHENDRAN
CENTRAL CIR 2(3) CHENNAI

[illegible]

INCOME TAX DEPARTMENT

This document is digitally signed [illegible]

Page 5 of [illegible]

3. Be that as it may, the writ petitioner managed to send a reply i.e., partial reply and sought for two weeks time to submit balance documents. This was on 27.09.2021 under a cover of letter which reads as follows:

[illegible]/2021

From

[illegible] Manuel

To

Assistant Commissioner

Central Circle (2) Chennai

Dear Sir

Sub:- Response to notice u/s 148(3) of income Tax Act, 1961 for AY 16-17

We herewith acknowledge the receipt of notice from your good office seeking documents. We herewith furnish some of the documents as available now. Since the time provided to us is less than 3 days, we are unable to present with all the documents.

Hence we request you to kindly provide 2 week time to submit the balance documents.

We also request you to provide with the reason for re opening the assessment of the AY 2016-17

Attached:-

1. Reconciliation of income and receipts
2. Break up of amounts received
3. Break up of amounts paid to the contractor
4. Break up of TDS and Challans submitted to the govt
5. Copy of IT Acknowledgment, 26AS

[illegible] Manuel

4. To be noted, writ petitioner has also sought for reasons for reopening which means the writ petitioner is taking GKN Driveshafts principle route/mechanism [GKN Driveshafts (India) Ltd., Vs. Income-Tax Officer and others reported in (2003) 259 ITR 19] but it may not be necessary to go into that aspect of the matter. Suffice to say that notwithstanding the aforementioned trajectory qua said SCN and partial response of writ petitioner/Assessee and writ petitioner/assessee seeking two weeks time, the impugned order was passed one working day later i.e., on 29.09.2021. This has caused infraction of NJP (Nature Justice Principle) qua impugned order, is learned counsel's say.

5. Mr.A.P.Srinivas, learned Senior standing counsel for Income tax accepted notice on behalf of lone respondent and with the consent of learned counsel on both sides, main writ petition was taken up owing to possibility of disposing of the matter on the aforementioned short point.

6. Learned Revenue counsel submitted that there is no infirmity qua said SCN as the same has been duly issued under Section 142(1) of IT Act. This Court carefully considered the submissions of both sides. It is not a case of infirmity qua said SCN, but it is a case of adequacy of time granted qua said SCN and as to whether that tantamounts to infraction of NJP principle in the case on hand. In the light of the narrative thus far, it is clear that reasonable time has not been given to the writ petitioner/Assessee to respond to said SCN much less ample or adequate time. Another facet of the matter is, the writ petitioner managed to respond (partially though) and sought for two weeks time to send the other documents, considering the nature of variation, this Court is of the considered view that it is only appropriate that the respondent should have waited for a fortnight for the writ petitioner to send in other documents which has been described as 'balance documents' under cover of letter of writ petitioner dated 27.09.2021. To be noted, this Court has not expressed any opinion or view at this juncture on the request for reason for reopening made by writ petitioner which is GKN Driveshafts principle/route. This is left to the wisdom and discretion of the respondent at this juncture.

7. In the light of the narrative, discussion and dispositive reasoning thus far, this Court is of the considered view that this is a appropriate and a fit case for sending the matter back to respondent for redoing/doing de novo assessment from said SCN stage. Therefore, the following order is passed:

(a) Impugned order being assessment order dated 29.09.2021 made under Section 144 read with Section 147 of 'The Income-tax Act, 1961 (43 of 1961)' [hereinafter 'IT Act' for the sake of brevity] qua writ petitioner is set aside solely on the ground that reasonable time has not been granted to writ petitioner qua preceding SCN i.e., SCN preceding the impugned order being SCN dated 24.09.2021;

(b) As sequitur to the previous limb (though obvious) it is made clear that this Court has not expressed any view (in this order) on the merits of the matter;

(c) The writ petitioner/Assessee shall now file the 'balance documents' and complete the reply within a fortnight from today i.e., on or before 10.11.2021;

(d) Thereafter, the respondent shall redo the assessment and pass assessment order within six weeks therefrom i.e., on or before 22.12.2021. To be noted, request of writ petitioner/Assessee for reasons for reopening (GKN Driveshafts principle) vide 27.09.2021 response is left open and therefore, the same shall also be dealt with within aforementioned six weeks time frame;

8. Captioned main Writ Petition is disposed of with the above directives. Consequently, captioned writ miscellaneous petition is also disposed of as closed. There shall be no order as to costs.

Sd/-
Assistant Registrar(CS-VI)

// True Copy //

Sub Assistant Registrar

mk

To

The Assistant Commissioner of Income tax
Central Circle 2(3), Room No.B-5, 'B' Wing
Investigation Building, No.46, Mahatma Gandhi Road,
Nungambakkam, Chennai-600 034.

+1cc to Mr.A.P.Srinivas, Advocate, S.R.No.55809

W.P.No.23071 of 2021
and
W.M.P.No.24285 of 2021

VG-II(CO)
RLP(22/11/2021)