IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.11.2021

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THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.No.23898 of 2021 &
W.M.P.Nos.25214, 25215 & 25217 of 2021
(Through Video Conferencing)

Veerabadran Saravanan ... Petitioner

Vs

1.The Assistant Commissioner of Income Tax,
National e-Assessment Centre, Delhi
E-Ramp, Jawaharlal Nehru Stadium,
Delhi - 110 003.

2.The Income Tax Officer,
Ward-1(1), Erode, Income Tax Department
R2, Nallappa Street, Periyar Nagar,
Erode - 638 001.

3.The Principal Commissioner of Income Tax,
Coimbatore-1, Icome Tax Department,
67A, Gopalpuram Race Course Road
Coimbatore- 641 018. ... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, to call for the records of the writ petitioner company on the file of the first respondent to quash the impugned order dated 21.09.2021 passed u/s 144/254 r.w.s 144B of the Act for the Assessment Year 2011-12 in ITBA/AST/S/144/2021-22/1035758458(1) and consequently direct the first respondent to complete the fresh assessment for the assessment year 2011-12 after granting reasonable/sufficient opportunity of hearing.

For Petitioner : Mr.A.S.Sriraman
For Respondents : Mr.A.P.Srinivas
Senior Standing Counsel

ORDER

The petitioner has challenged the impugned order dated 21.09.2021 passed under Section 144 of the Income Tax Act, 1961 read with Sections 144 and 254 for the Assessment year 2011-12 pursuant to remand order of the Tribunal dated 18.12.2019. It is the specific case of the petitioner that a notice dated 23.08.2021 was issued to the petitioner under Section 142(1) which called upon the petitioner to furnish certain details to which the petitioner replied on the following date on 26.08.2021 and expressed his inability to upload information as the website of the department was not functioning since 01.06.2021 and it was very difficult to even to log into the site and also very difficult to upload all the details called for.

2.The case of the petitioner is that even as on 24.08.2021 the petitioner was unable to locate the website of the department and therefore requested time till the mal-function in the website of the respondent is rectified.

3.Appearing on behalf of the petitioner, learned counsel for the petitioner further submits that without any reply, the respondent has straight away proceeded to issue a show cause notice dated 17.09.2021 which encloses a Draft Assessment order and called upon the petitioner to respond by 20.09.2021 giving a very short period of time for the petitioner to respond. It is submitted that the respondents passed the impugned assessment order on 21.09.2021 and therefore the impugned order is liable to be quashed.

4.Appearing on behalf of the respondents, the learned Senior Standing Counsel for the respondents submits that this is not a new case. The dispute pertains to the Assessment year 2011-12 and the matter had gone up to the Tribunal and ultimately by an order dated 18.12.2019 the Tribunal had remitted the case back to the respondents to pass appropriate orders on merits and in accordance with law. Therefore, it was not open to the petitioner to find fault with the technical glitches in the website of the respondents.

5.He further submits that earlier an opportunity was given vide notice dated 19.02.2021 and the petitioner was asked to comply with the same by 25.02.2021 which the petitioner failed to comply with the same. Thereafter, another notice was issued on 12.08.2021 followed by another notice dated 23.08.2021 for compliance by 16.08.2021 and 26.08.2021 respectively. It is submitted that the petitioner failed to avail several opportunities given by the department and since the petitioner failed to comply with the requirements, the impugned order has been passed.

6.He submits that the writ petition is not a bona-fide and lacks of merits inasmuch as the petitioner has an alternate remedy by way of an Appeal before the Appellate Commissioner and therefore prays that the writ petition is liable to be dismissed.

7.Heard the learned counsel for the petitioner and the learned Senior Standing Counsel for the respondents and perused the documents filed in support of the petitioner.

8.The facts are not in dispute that the petitioner has expressed his inability in uploading the information pursuant to the 3rd notice dated 23.08.2021 issued under Section 142(1) of the Income Tax Act, 1961 by a reply dated 24.08.2021. The reply of the petitioner to the aforesaid notice reads as under:-

> ''In the heading of the proceedings it is stated to under Section 144 of the Act. The web site of the department is not functioning since 01.06.2021 and it was very difficult to even to log into the site. In these circumstances, it is very difficult to upload all the details called for. Even today I have received a notice dated 23.08.2021 and I could not find the said notice in the web site of the department. Therefore I request your goodself to kindly wait till the issue of functioning of the website incometax.gov.in is fully functional.''

9.The respondent have not responded to the above communication of the petitioner dated 24.08.2021. Instead, the respondent issued a show cause notice on 17.09.2021 enclosing a Draft Assessment order. The time given for the petitioner to respond was till 20.09.2021. The time given for the petitioner to respond for a notice consisting of 56 pages within a period of two days has resulted in a gross violation of principles of natural justice as the Assessment proceedings has been conducted in a mechanical manner. The Assessment order has been passed on 21.09.2021 i.e,. one day after the date of the deadline was fixed in the show cause notice dated 17.09.2021 shows that the National Faceless Assessment procedure incorporated under Section 144B of the Income Tax Act has not achieved the purpose it was envisioned. The idea of Faceless Assessment is to ensure that there is no personal interaction and no physical contact to rule out any irregularities which were noticed prior to incorporation of Section 144B of the Income Tax Act. As the Assessment orders runs to 56 pages and has been passed within two days of the time fixed shows it has been passed in gross violation of principle of natural justice.

10.Considering the same, the impugned order is set aside and the case is remitted back to the respondents to pass a fresh speaking order within a period of forty five (45) days from the date of receipt of a copy of this order. The petitioner is directed to upload all the information and rely that were called for by the respondents under Section 142(1) within a period of fifteen (15) days from the date of receipt of a copy of this order. The Assessment proceedings shall be carried out in accordance with law.

11.Accordingly, this writ petition stands allowed with the above observations. No costs. Consequently connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS-IX)

//True Copy//

Sub Assistant Registrar

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To
1. The Assistant Commissioner of Income Tax,
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Delhi - 110 003.

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Coimbatore-1, Icome Tax Department,
67A, Gopalpuram Race Course Road
Coimbatore- 641 018.

+1cc to Mr.A.P.Srinivas, Advocate SR.No.57794
+1cc to Mr.S.Sridhar, Advocate SR.No.58310

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GPL(CO)
GN(17/12/2021)