IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.11.2021

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.NO.23755 OF 2021
&
W.M.P.NOS.25011, 25010, 25009 & 25012 OF 2021

(Through Video Conferencing)

Murugesan Santhi ... Petitioner

.Vs.

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

2. The Assistant Commissioner of Income Tax,
Non Corporate Circl - 22 (1), Chennai,
Income Tax Department,
Ramakrishna Street,
West Tambaram,
Chennai - 600 045.

3. The Principal Commissioner of Income Tax,
Chennai - 1,
Income Tax Department,
121, Nungambakkam High Road,
Nungambakkam,
Chennai - 600 034. ... 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 28.09.2021 passed u/s 143(3) r.w.s 144B of the Act for the Assessment Year 2019-2020 in ITBA/AST/S/143(3)/2021-22/1035978241(1) and consequently direct the first respondent to complete the fresh assessment for the assessment year 2019-20 after granting reasonable/sufficient opportunity of hearing and pass such other/further orders as this Hon'ble Court may deem fit and proper on the facts in the circumstances of the case and thus render justice.

For Petitioner : Mr.A.S.Sriraman

For Respondents : Mr.Prabhu Mukunth Arun Kumar
Senior Standing Counsel

ORDER

The petitioner has challenged the assessment order passed by the National Faceless Assessment Centre. The impugned order precedes a survey under Section 133 A for the assessment year 2019/20. After the survey was conducted, a notice under Section 143 (2) was also issued to the writ petitioner. Thereafter, series of notices under Section 142 (1) of the Income Tax Act, 1961 were issued by the Income Tax Officer (National e-Assessment Centre) calling upon the writ petitioner to furnish details.

2. The writ petitioner appears to have responded and thereafter few other notice under same provision were issued to the writ petitioner on 22.2.2021 and on 25.8.202. The writ petitioner has also responded to the same by providing the details called for. Thereafter on 23.09.2021 the writ petitioner was issued with a show cause notice with a draft assessment order by the Income Tax Officer, National Faceless Assessment Centre. The writ petitioner was asked to respond to the above by 25.09.2021. The writ petitioner also responded to the show cause notice on 25.09..2021. The writ petitioner however requested the respondents to extend personal hearing in terms of Section 144 (B) (7) (vii). Thereafter, the National Faceless Assessment Centre also fixed the hearing on 28.09.2021 at 10:30 A.M through video conferencing.

3. The writ petitioner also participated in the said proceedings pursuant to which the impugned order has been passed on the same day i.e., 28.09.2021. In this writ petition the learned counsel for writ petitioner submits that the major dispute pertains to the addition of stock and therefore, without considering the same the Income Tax Officer of National Faceless Assessment Centre has passed the impugned order. It is submitted that it has been passed in the violation of principles of natural justice as it is not possible for such assessment order to be passed on the same date of the hearing.

4. The learned Counsel for the writ petitioner further submits that the respondents has nearly confirmed the proposals

in the show cause notice and adopted the draft assessment order which was enclosed along with the show cause notice issued to the writ petitioner.

5. Learned Counsel for the writ petitioner further submits that the statutory safeguards under Section 144 (B) (1) (xvi) has not been satisfied. It is further submitted that under the aforesaid sub-Clause the National Faceless Assessment Centre is mandated to examine the draft assessment order in accordance with risk management strategy by the Board.

6. Learned Counsel for writ petitioner submits that the Risk Management Strategy has not been specified till dated by the Board and therefore, the impugned assessment order without a Risk Management Strategy of the Board is liable to be quashed.

7. Learned Counsel for writ petitioner submits that the impugned assessment order has been passed to ensure that the assessment orders are passed in time at the last date for filing assessment order expired on 30.09.2021 and in the process in a violation of principles of natural justice and therefore, the impugned order passed at the fag end of the limitation are liable to be quashed.

Further, in terms of the decision of the Hon'ble Supreme Court in Principal Commissioner of Income Tax and others Vs. M/S. LG Electronics India Private Limited, 2018 (7) TMI 1905 (SC) passed in Civil Appeal No. 6850 of 2018 vide order dated 20.7.2018 which reads as under:

> "Having heard Shir Vikramjit Banerjee, learned ASG appearing on behalf of the appellant, and giving credence to the fact that he has argued before us that the administrative circualr will not operate as a fetter on the Commissioner since it is a quasi judicial authority, we only need to clarify that in all cases like the present, it will be open to grant deposit orders of a lesser amount than 20 %, pending appeal.

The appeal is disposed of accordingly."

8. Appearing on behalf of the respondent, learned counsel for the respondents submits the case as a checkerred history, starring with the survey under Section 133 (A) of the Income Tax Act, 1961 and notices issued under Section 142 (1) of the Income Tax Act, 1961 by the National e-Assessment Centre to the writ petitioner to furnish the details. It is submitted that the writ petitioner took time to reply in the process the time for passing the assessment was lapsing and only at the fag end of

the limitation the National Faceless Assessment Centre could get ready with the show cause notice and draft assessment order.

9. The learned Counsel for for the respondent further, submitted that the Section 144 (B) (1) (xvi) contemplates three different situations which are alternative to each other and in this case the option under sub Clause (b) has been adopted which reads as under:

> (b). Provide an opportunity to the assessee, in case any variation prejudicial to the interest of assessee is proposed, by serving a notice calling upon him to show cause as to why the proposed variation should not be made;

10. The writ petitioner has been issued with notices under Section 142 (1) from January 2021 which the writ petitioner has also promptly replied to before the respondent. The draft assessment order was issued on 23.09.2021. The dispute in the present writ petition touches on the merits of the assessment which cannot be examined in detail to arrive at a fair conclusion, one way or the other. The writ petitioner has an alternative and efficacious remedy under the Appellate Commissioner under Section 246 (A) of the Income Tax Act, 1961. Considering the same the writ petition filed challenging the assessment order passed by the National Faceless Assessment Centre, Delhi cannot be entertained.

11. Heard learned counsel for writ petitioner had perused the voluminous records which have been filed in the present writ petition. Section 144 (B) of the Income Tax Act, 1961 was inserted with effect from 01.04.2021. As a matter of act the aforesaid provision contemplates that National Faceless Assessment Centre to examine the draft assessment order in accordance with the Risk Management Strategy specified by the Board. The Counsel for respondents was unable to confirm whether any Risk Management Strategy has been specified by the Board. How assessment orders have been passed by the respondents in terms of the aforesaid provisions.

12. The writ petitioner is, therefore, directed to file a statutory appeal in terms of the above provisions within a period of 30 days from the date of receipt of this order. Considering the fact that the impugned order passed without appropriate Risk Management Strategy of the Board is contemplated under Section 144 (B) (1) (xvi) the Appellate Commissioner may consider the appeal of the writ petitioner, if such appeal is filed on merits and in accordance with law. The mandatory requirement a pre deposit under Section 220 (6) shall however, be waived in the light of the fact that the entire

assessment proceedings was complete by the respondents at the fag end of the limitation to avoid lapsing of on account of limitation. The Appellate Commissioner is, therefore, directed to pass appropriate orders on merits within a period of three months from the date of receipt of this order. Needless to state, the writ petitioner shall be heard and if provision are provided for personal hearing through video conferencing, such facility may be made available to the writ petitioner.

Thus the writ petition stands disposed of with the above observations. There shall be no order as to costs.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

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To

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

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Nungambakkam,
Chennai - 600 034.

+1cc to Mr.S.Sridhar, Advocate, S.R.No.58318

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& 25012 OF 2021

KG(CO)
PBS/03/12/2021