IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.10.2021

CORAM

THE HONOURABLE MR.JUSTICE M.SUNDAR

W.P.No.23084 of 2021
&
WMP.No. 24309 of 2021

1. Anbalagan Pandian

2. Lakshmi

... Petitioners

Vs.

1. Additional/Joint/Deputy/Assistant Commissioner of Income Tax
Income Tax Officer,
National Faceless Assessment Centre,
Delhi.

2. National Faceless Assessment Centre
Income Tax Department,
Ministry of Finance,
Government of India,
Delhi.

...Respondents

Prayer: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus to call for records and quash the Assessment Order dated 22.09.2021 bearing No. ITBA/AST/S/147/2021- 22/1035793218 (1) and consequential Demand Notice dated 22.09.2021 bearing No. ITBA/AST/S/156/2021 22/1035793269 (1) passed by Respondent No.1 and consequently direct the respondents to provide personal hearing to the petitioner Nos.1&2 in the proceedings under show cause notice dated 06.09.2021 under Section 144 of the Income Tax Act, 1961 Vide DIN:ITBA/AST/F /144(SCN)(F)/ 2021-22/1035324673(1).

For Petitioner : Mr.S.Manuraj

For Respondents : Mr.ANR.Jayapratap
Junior Standing Counsel

ORDER

Captioned main writ petition has been filed assailing an Assessment Order dated 22.09.2021 bearing reference No.ITBA/AST/S/147/2021-22/1035793218(1) made under Section 147 read with Sections 144 and 144 B of 'the Income-tax Act, 1961 (43 of 1961)' [hereinafter 'IT Act' for the sake of brevity] pertaining to the assessment year 2014-15 qua a private limited company which went by the name 'Speed & Safe Freight Systems India Private Limited'. This assessment order shall from hereon be referred to as 'impugned order' for the sake of convenience and clarity.

2. This Court is informed that aforementioned Private Limited Company has been struck off on and from 25.10.2019 and the two writ petitioners, who were Directors in the Private Limited Company, have laid the challenge qua impugned order.

3. The circumstances under which the two writ petitioners, who are spouses, joined together and assailed the impugned order has been articulated in paragraph 2 of the writ affidavit and it may not be necessary to allude to the same in the light of Section 179 of IT Act.

4. Be that as it may, learned counsel for writ petitioner Mr.S.Manuraj submits that a notice under Section 148 of IT Act dated 07.08.2019 was followed by a notice under Section 142 (1) of IT Act dated 02.02.2021. It may not be necessary to trace the trajectory of the proceedings thereafter and it will suffice to straight away refer to a show-cause notice dated 06.09.2021 bearing reference No.ITBA/AST/F/144(SCN)(F)/2021-22/1035324673(1), which has been issued under Section 144 of IT Act as the crux and gravamen of the writ petitioners' campaign against the impugned order is posited and pivoted on the response to the show cause notice (SCN) and technical glitch which came in the way of response to this SCN. A typical screen-shot qua response to said SCN as placed before this Court is as follows:

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View Notices for e-Proceedings

Proceeding Name: Assessment Proceeding u/s 147

PAN: AASCS[illegible]

Name of Assessee: SPEED & SAFE FREIGHT SYSTEMS INDIA PRIVATE LIMITED

Assessment Year: 2014-15

Financial Year: 2013-14

Notice/ Communication Reference ID : 100038931633

147 Notice u/s	ITBA/AST/S/147/2021-22/1035793218(1) Document reference ID	Description : [ITBA]Order under section 147 r.w.s. 144 of the Income Tax Act, 1961 Issued On : 23-Sep-2021	Submit Response Notice/Letter Pdf Seek/View Adjournment

Notice/ Communication Reference ID : 100038931711

Notice u/s	ITBA/AST/S/116/2021-22/1035793277(1) Document reference ID	Description : [ITBA]Order under section 147 r.w.s. 144 of the Income Tax Act, 1961 Issued On : 23-Sep-2021	Submit Response Notice/Letter Pdf Seek/View Adjournment

Notice/ Communication Reference ID : 100038931703

144	ITBA/AST/S/156/2021-	Description : [ITBA]Order under section 147	Seek/View Adjournment

e-Filing

Call Us

Notice/ Communication Reference ID : 100038227305

144 Notice u/s	ITBA/AST/F/144(SCN)(1)/2021-22/1035534673(1) Document reference ID	Description : [ITBA]Show Cause Notice Issued On : 08-Sep-2021 Response Due Date : 13-Sep-2021	View Response Notice/Letter Pdf Seek/View Adjournment

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Notice/ Communication Reference ID : 100036935806

142(1) Notice u/s
ITBA/AST/F/142(1)/2021-22/1034467593(1)
Description : ITBA/Notice u/s 142(1) of Income Tax Act 1961
Response Due Date : 05-Aug-2021
Notice/Letter Pdf
Submit/View Adjournment

Notice/ Communication Reference ID : 100032595005

142(1) Notice u/s
ITBA/AST/F/142(1)/2020-21/1031364182(1)
Description : ITBA/Notice u/s 142(1) of Income Tax Act 1961
Response Due Date : 16-Mar-2021
Notice/Letter Pdf
Submit/View Adjournment

Notice/ Communication Reference ID : 100031950017

ITBA/AST/S/91/2020-21/1030919757(1)
Description : ITBA Reminder Letter
Notice/Letter Pdf
Submit/View Adjournment

Notice/ Communication Reference ID : 100031957030

143(2) Notice u/s
ITBA/AST/M/143(2)_4/2020-21/1030919392(1)
Description : ITBA Notice u/s 143(2) of Income Tax Act 1961
Response Due Date : 11-Mar-2021
Notice/Letter Pdf
Submit/View Adjournment

Notice/ Communication Reference ID : 100031918245

143(2) Notice u/s
ITBA/AST/F/143(2)_4/2020-21/1030098317(1)
Description : ITBA/Notice u/s 143(2) of Income Tax Act 1961
Response Due Date : 11-Mar-2021
Notice/Letter Pdf
Submit/View Adjournment

Notice/ Communication Reference ID : 100030910622

142(1) Notice u/s
ITBA/AST/F/142(1)/2020-21/1030730356(1)
Description : ITBA/Notice u/s 142(1) of Income Tax Act 1961
Notice/Letter Pdf
Submit/View Adjournment

5. A perusal of the aforementioned home page reveals that there is no provision for personal hearing, though it is there in the model web page, more importantly, the response of the writ petitioner had not been uploaded and the impugned order has been made on the basis that the writ petitioners have not responded.

6. Mr. ANR. Jayapratap learned Revenue Counsel accepted notice on behalf of both the respondents.

7. Owing to the short point on which captioned writ petition now turns, with the consent of learned counsel on both sides, main writ petition was taken up.

8. Learned Revenue Counsel submits that there is no infirmity qua show cause notice dated 06.09.2021 as it has resorted to Best judgement method under Section 144 of the IT Act. Learned counsel also submits that personal hearing is not statutorily imperative and the writ petitioners, not having sought for personal hearing, cannot now project the same as an argument in their challenge qua impugned order.

9. Therefore, the above leaves us with one point and that is writ petitioners' response not getting uploaded. This may well have been owing to the volume of the document, but it is not possible to say anything with specificity owing to this being Faceless Assessment and owing to the artificial intelligence that is being deployed is learned Revenue counsel's further say. Be that as it may, the fact of the matter is, the writ petitioners' response did not get uploaded and it is necessary that the same has to be looked into before an assessment order is made pursuant to said SCN under Section 144 of IT Act which is a resort to the Best judgement method.

10. Therefore, this Court is of the considered view that this is a fit case to send the matter back to the second respondent by setting aside the impugned order (without expressing any view or opinion on the merits of the matter) with a directive to redo the assessment from the SCN stage. To be noted, the proceedings post said SCN dated 06.09.2021 will stand effaced. The following order is passed:

(a) Impugned order, being order dated 22.09.2021 bearing No. ITBA/AST/S/147/2021-22/1035793218 (1) and consequential Demand Notice dated 22.09.2021 bearing No. ITBA/AST/S/156/2021-22/1035793269 (1) are set aside solely on the ground that writ petitioners' response to SCN dated 06.09.2021 under Section 144 of IT Act was not uploaded owing to a technical glitch;

(b) In the light of aforesaid limb of this order, though obvious it is set out for the purpose of clarity and specificity that this Court has not expressed any view or opinion on the merits of the matter qua assessment;

(c) The respondents shall now redo the matter from the 06.09.2021 SCN stage i.e., show cause notice under Section 144 of IT Act;

(d) The writ petitioners shall upload their response to the 06.09.2021 SCN within a fortnight from today i.e., on or before 11.11.2021;

(e) The respondents shall consider the response of the writ petitioners i.e., response to 06.09.2021 SCN and complete assessment on its own merits and in accordance with law, within six weeks therefrom i.e., on or before 23.12.2021.

11. Captioned writ petition is disposed of with the directives adumbrated supra. Consequently, captioned WMPs are disposed of as closed. There shall be no order as to costs.

Sd/-

Assistant Registrar (CS-IX)

//True Copy//

Sub Assistant Registrar

nst/gpa

1. Additional/Joint/Deputy/Assistant Commissioner of Income Tax
   Income Tax Officer,
   National Faceless Assessment Centre,
   Delhi.

2. National Faceless Assessment Centre
   Income Tax Department,
   Ministry of Finance,
   Government of India,
   Delhi.

+1cc to Mr.S.Manuraj, Advocate, S.R.No.55894

W.P.No.23084 of 2021 &
WMP.No.24309 of 2021

NRL(CO)
SB(23/11/2021)