IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.11.2021

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THE HON'BLE MR.JUSTICE C.SARAVANAN

W.P.No.23799 of 2021
and
W.M.P.Nos.25065, 25069 & 25070 of 2021

(Through Video Conferencing)

M/s.Anand Cine Services Pvt. Ltd.,
Represented by its Director,
Mr.A.Anand Prasad,
(Earlier a partnership firm, Anand Cine Services)
No.3, Sarangapani Street, T Nagar,
Chennai - 600 017. ...Petitioner

Vs.

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

2. Assistant Commissioner of Income Tax (e-verification)
Income Tax Department,
Delhi. ...Respondents

Writ Petition filed under Article 226 of Constitution of India, for issuance of a Writ of Certiorari, to call for the records of the respondents contained in their notice bearing No.ITBA/AST/S/143(2)/2019-20/1018186180(1) issued by the second respondent under Section 143(2) of the Income Tax Act, 1961 read with Rule 12E of the Income Tax Rules, 1962, dated 22.09.2019 and all proceedings in furtherance thereof, including but not limited to the assessment order passed by the first respondent bearing DIN:ITBA/AST/S/143(3)/2021-22/1035943129(1) passed under Section 143(3) read with Section 144B of the Income Tax Act, 1961, dated 27.09.2021, for PAN:AAAFA499BK for Assessment Year (AY) 2018-19 and to quash the same as arbitrary, unjust and illegal.

For Petitioner : Mr.Suhrith Parthasarathy
For Respondents: M/s.Hema Muralikrishnan
Senior Standing Counsel

O R D E R

The petitioner in this Writ Petition has challenged the impugned Assessment Order dated 27.09.2021 passed by the first respondent under Section 143(3) read with Section 144B of the Income Tax Act, 1961 for the Assessment Year 2018-2019.

2. The impugned Assessment Order dated 27.09.2021 immediately precedes a Show Cause Notice dated 21.09.2021 issued by the first respondent under Section 143(3) of the Income Tax Act, 1961. The said Show Cause Notice includes a Draft Assessment Order and called upon the petitioner to reply by 24.09.2021. The petitioner appears to have requested for adjournment up to 27.09.2021 through ITBA Web Portal on 23.09.2021. The request of the petitioner was rejected in the ITBA Web Portal Portal as "Error : Please select a date 7 days prior to 30-Sep-2021", because, the time for completing the Assessment would expire on 30.09.2021.

3. The petitioner appears to have taken over the business of a partnership concern, namely, Anand Cine Services. In the first half of the Assessment Year 2018-2019, the income tax return was filed in the name of partnership concern and thereafter a revised return was filed on 19.02.2019 in the name of the petitioner which took over the business of the aforesaid partnership concern (Anand Cine Services).

4. As far as the revised return filed in the name of the petitioner on 19.02.2019 is concerned, the scrutiny assessment order came to be passed on 20.01.2021 under Section 143(3) of the Income Tax Act, 1961. Thereafter, it appears that a notice under Section 148 of the Income Tax Act, 1961 was issued on 21.04.2021 which was subject matter of W.P.Nos.19368, 16444 and 16795 of 2021.

5. The learned counsel for the petitioner submits that the respondents were not entitled to pass impugned Assessment Order as the firm does not exist any longer and particularly in the light of the fact that the revised return was filed in the name of the petitioner for the entire year on 19.02.2019. The learned counsel further submits that the entire demand is liable to be quashed in the light of the decision of the Hon'ble Supreme Court in Pr.Commissioner of Income Tax, New Delhi Vs. Maruti Suzuki India Limited, 2019 SCC OnLine SC 928.

6. Appearing on behalf of the respondents, the learned Senior Standing Counsel submits that the impugned order pertains to the Assessment Year 2018-2019 and the department is duty bound to complete the Assessment by 30.09.2021. It is further

submitted that the petitioner was well aware of the objections raised by the Department inasmuch as several notices under Section 142(1) of the Income Tax Act, 1961 were issued in the name of Anand Cine Services (defunct partnership firm). It is further submitted that as the assets and business of the said defunct Anand Cine Services were taken over by the petitioner, it is not open to challenge the said Assessment Order as the assessment under the Income Tax Act, 1961 is based on the PAN.

7. The learned Senior Standing Counsel for the respondents further submits that the petitioner ought to have replied in the web portal to the notice dated 21.09.2021 issued under Section 143(3) of the Income Tax Act, 1961 on or before 24.09.2021. She further submits that the decision of the Hon'ble Supreme Court in Pr.Commissioner of Income Tax, New Delhi Vs. Maruti Suzuki India Limited, 2019 SCC OnLine SC 928 has been distinguished on facts by this Court by its order dated 12.02.2021 in M/s. Mando Automotive India Private Limited Vs. The Deputy Commissioner of Income Tax, Corporate Circle 4(1), Chennai, in W.P.No.2779 of 2017. She further submits that the above order has been approved by the Division Bench of this Court by its order dated 15.09.2010 in W.A.No.1263 of 2021.

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

9. It is noticed that though the notice under Section 142(1) of the Income Tax Act, 1961 has been issued to the erstwhile defunct firm, namely, Anand Cine Services, it is based on the PAN. No serious objections can be raised as far as the issue of notice in the name of erstwhile defunct firm is concerned inasmuch as the assets and liabilities of the said defunct firm were taken over by the petitioner.

10. As the copy of the documents to assess the income would require for the detailed consideration by the Assessing Authority, reply ought to have been filed by the petitioner in response to the Show Cause Notice dated 21.09.2021 by 24.09.2021. Since the time granted for reply by 24.09.2021 has expired, the impugned order has been passed.

11. Considering the fact that the Assessment Order was passed without giving a fair opportunity to the petitioner to file reply, the impugned Assessment Order dated 27.09.2021 is liable to be quashed and the case is liable to be remitted back to the first respondent for passing a fresh order, within a period of sixty (60) days from the date of receipt of a copy of this order. Needless to state, before passing such order, the petitioner shall be heard through Video Conferencing.

12. Liberty is therefore given to the petitioner to file reply within a period of thirty (30) days from the date of receipt of a copy of this order. The petitioner is also entitled to file suitable applications / representations along with the relevant documents which may be considered by the respondent in accordance with provisions of the Income Tax Act, 1961 and the Income Tax Rules, 1962 before passing order.

13. It is noticed that the petitioner cannot now filed the reply to the said Show Cause Notice dated 21.09.2021 in the ITBA Portal due to the expiry of time to reply. Therefore, the respondents are directed to give suitable instructions to the Administrator of the ITBA Portal to facilitate the petitioner to upload the reply, documents, representation and etc. in response to the Show Cause Notice dated 21.09.2021.

14. This Writ Petition stands disposed with the above observations. No cost. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

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To

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

2. The Assistant Commissioner of Income Tax
(e-verification)
Income Tax Department, Delhi.

+1cc to Mr.Suhrith Parthasarathy, Advocate, S.R.No.58115
+1cc to M/s.Hema Muralikrishnan, Advocate, S.R.No.58091

W.P.No.23799 of 2021 and
W.M.P.Nos.25065, 25069
& 25070 of 2021

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NSK 09/12/2021