



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.12.2021

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.Nos.25403 & 25406 of 2021
and
W.M.P.Nos.26826, 26827, 26828, 26830,
26831 & 26832 of 2021

(Through Video Conferencing)

1.Vellaian Selvaraj ...Petitioner
in W.P.No.25403 of 2021
2.Kumaravel Muthiah Mallika ...Petitioner
in W.P.No.25406 of 2021

Vs

1. The Additional/Joint/Deputy/Asst.Commissioner of Income Tax/
Income Tax Officer,
National Faceless Assessment Centre,
Income Tax Department,
Ministry of Finance,
Room No.401, 2nd Floor, E-Ramp,
Jawaharlal Nehru Stadium,
Delhi - 110 003.
2. The Income Tax Officer,
Ward 3, No.2, Barracks Cross Street,
Officers Line,
Vellore - 632 001. ...Respondents
in both W.Ps

Prayer in W.P.No.25403 of 2021: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari calling for the records of the first respondent herein in Assessment Proceedings in PAN NO.AANPS3885Q for the Assessment Year 2019-2020 and quash the Impugned Order DIN:ITBA/AST/S/143 (3)/2021-2022/1035774105(1) dated 21.09.2021 passed by the first respondent for the Assessment Year 2019-2020, when in letter



dated 26.08.2021 by the first respondent has duly admitted the fact that he has no jurisdiction to pass the impugned order.

Prayer in W.P.No.25406 of 2021: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, calling for the records of the first respondent herein in Assessment Proceedings in PAN No.AAFPM8731M for the Assessment Year 2019-2020 and quash the Impugned Order DIN:ITBA/AST/S/143 (3)/2021-2022/1036005759(1) dated 29.09.2021 passed by the first respondent for the Assessment Year 2019-2020, when in letter dated 26.08.2021 by the first respondent has duly admitted the fact that he has no jurisdiction to pass the impugned order.

For Petitioners : Ms.G.Vardini Karthik
(In both W.Ps)

For Respondents : Mr.Prabhu Mukund Arun Kumar
(In both W.Ps) Junior Standing Counsel

COMMON ORDER

Mr.Prabhu Mukund Arun Kumar, learned Junior Standing Counsel takes notice on behalf of the respondents.

2. These writ petitions have been filed by the petitioners against the impugned Assessment Orders dated 21.09.2021 and 29.09.2021 for the Assessment Years 2019-2020. The petitioners have challenged the impugned Assessment Orders primarily on the ground that the assessment by the National Faceless Assessment Centre is contrary to the Board circular in Circular No.225/61/2021/ITA-II dated 10.06.2021.

3.It is submitted that the National Faceless Assessment Centre by a communication dated 26.08.2021 had also clarified that the case has to be transferred back to the Jurisdictional Assessing Officer as the assessment emanated from a search proceedings under Section 133A of the Income Tax Act, 1961.

4. The second round of attack on the impugned Assessment Orders are that after the petitioners were issued with a Show Cause Notices dated 16.09.2021, the petitioners sent a detailed reply on 20.09.2021 within the time stipulated therein. However, the impugned Assessment Orders have been passed by the first respondent by merely reproducing the reply with one addition by simply stating that the reply of the petitioners were not satisfactory. It is submitted that the orders are non-speaking and are therefore liable to be quashed.



5. Opposing the prayer, the learned Junior Standing Counsel for the respondents submits that the assessment is not purely based on the documents that were impounded from the petitioners and that the petitioners had also not raised any objection as to jurisdiction of the National Faceless Assessment Centre to pass an Assessment Order in response to the Show Cause Notice dated 16.09.2021. The learned Additional Government Pleader further submits that the petitioners are also acquiesced into the aforesaid proceedings by filing a reply on 20.09.2021. It is further submitted that the petitioner has also filed statutory appeal on 20.10.2021 before the Appellate Commissioner under Section 246A of the Income Tax Act, 1961 and therefore on this count also the petitioners cannot maintain these writ petitions as the petitioners have decided to rightly opted for an alternate remedy before the Appellate Commissioner which is also an efficacious remedy under the Income Tax Act, 1961.

6. By way of rejoinder, the learned counsel for the petitioners submits that the power of the Appellate Commissioner to remit the case back has been taken away under the Income Tax Act and therefore the petitioners will be prejudiced. The petitioners were driven to file an appeal before the Appellate Commissioner considering the fact that the limitation was expiring.

7. Heard the learned counsel for the petitioners and the learned Junior Standing Counsel for the respondents. I have perused the impugned Assessment Orders and the Board circular cited by the learned counsel for the petitioners and the provisions of the Income Tax Act, 1961.

8. The respondents are bound to complete the assessment in a time bound manner and therefore they passed the impugned Assessment Orders. However while passing the impugned Assessment Orders, there is no discussion in the impugned Assessment Orders.

9. The impugned Assessment Orders merely reproduces the content of the respective reply. There is no discussion in the impugned Assessment Orders to support the conclusion in the impugned Assessment Orders. Only a conclusion has been given in the impugned Assessment Orders that the reply filed by the respective petitioners were not satisfactory. This is not sufficient. The impugned Assessment Orders thus passed are non-speaking orders and are therefore liable to be quashed for fresh consideration by the first respondent to pass a speaking order. Though the assessment through National Faceless Assessment Centre is both novel and welcome and was intended to weed out the malaise that plagued the earlier system, the procedure adopted under the Faceless Assessment has left very little time



for both the assesseees and the Assessing Officer to respond to the Show Cause Notices.

10. While, the assesseees are driven to respond to the Show Cause Notices/the Draft Assessment Orders within few days from the date of receipt of Show Cause Notices, the Assessing Officers are also expected to pass orders almost immediately.

11. The time given for the Assessing Officer in the National Faceless Assessment Centre to pass a well-reasoned and a speaking orders appears to be hardly sufficient. Invariably, these proceedings are taken up at the fag end of the limitation as a result of which non-speaking orders and prone to challenge under Article 226 of the Constitution of India.

12. It is evident that the Assessing Officers hardly get enough time to go through the case file to pass a proper and well-settled considered Assessment Order. Instances of order being passed without proper consideration of all the facts are increasing and results in mechanical orders which prone to challenge under Article 226 of the Constitution of India.

13. Both the Assesseees and the Assessing Officers are under tremendous pressure to meet deadlines as the Show Cause Notices itself are being issued at the fag end of the limitation. Therefore, the assessment procedure needs to be strengthened by giving adequate time both to the assesseees and the Assessing Officer who are assigned to pass Assessment Order under the National Faceless Assessment Regime.

14. This needs to be addressed by the authorities who are implementing the Faceless Assessment. This may be suitably addressed by the authorities and the system is strengthened so that both the assesseees and the Assessing Officer get adequate time in the assessment proceedings.

15. Considering the fact that the impugned Assessment Orders have been passed without any discussion, these Writ Petitions are allowed by remitting the case back to the National Faceless Assessment Centre to pass a fresh order within a period of sixty days based on the reply filed by the petitioners even though the petitioners had filed statutory appeal under Section 246A of the Income Tax Act, 1961 before the Appellate Commissioner.

16. The respondents are directed to fix a hearing through video conferencing and also instruct the Administrator of the Web Portal to permit the petitioners time to file additional reply/representations, if any, before fresh orders passed.

17. This exercise shall be carried out by the respondents



within a period of thirty days from the date of receipt of a copy of this order. The issue relating to the jurisdiction of the respondents is also left open to be canvassed by the petitioners before the first respondent. No costs. Consequently, connected Writ Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CS-VIII)

//True Copy//

Sub Assistant Registrar

arb/nst

To

1. The Additional/Joint/Deputy/Asst.Commissioner of Income Tax/
Income Tax Officer,
National Faceless Assessment Centre,
Income Tax Department,
Ministry of Finance,
Room No.401, 2nd Floor, E-Ramp,
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2. The Income Tax Officer,
Ward 3, No.2, Barracks Cross Street,
Officers Line,
Vellore - 632 001.

+2cc to Mr.Arun Kurian Joseph, Advocate, S.R.No.65060 & 65061

+1cc to M/s.Hema Muralikrishnan, Advocate, S.R.No.25403

W.P.Nos.25403 & 25406 of 2021
and

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26830, 26831 & 26832 of 2021

BS (CO)
RGA(20/12/2021)