IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.12.2021

CORAM
THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.No.26064 of 2021
and
W.M.P.Nos.27502, 27504, 27506, 27508 & 27509 of 2021

(Through Video Conferencing)

M/s. Casa Grande Civil Engineering Private Limited,
Represented by its Chief Financial Officer,
New No.111, Old No.59,
NPL Devi, LB Road,
Thiruvanmiyur, Chennai – 600 041. ...Petitioner
PAN AAFCC5227K

Vs

1. The Assistant Commissioner of Income Tax,
National e-Assessment Centre, Delhi,
2nd Floor, E-Ramp, Jawaharlal Nehru Stadium,
Delhi – 110 003.

2. The Deputy Commissioner of Income Tax,
Corporate Circle – 1(1), Chennai,
Income Tax Department,
121, Nungambakkam High Road,
Nungambakkam, Chennai – 600 034.

3. The Principal Commissioner of Income Tax-1,
Income Tax Department,Room No.401, 4th Floor, New Block,
121, Mahatma Gandhi Road,
Chennai – 600 034.

4. National Faceless Appeal Centre,
Pr.CCIT, NFAC, C-Block,
4th Floor, SPM CIVIC Centre,
New Delhi - 110 001. ...Respondents
(R$ Suo motu impleaded vide order dated 09.12.2021
in W.P. No. 26064/2021)

Prayer Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus calling for the records of the Writ Petitioner company on the file of the First Respondent to quash the impugned order dated 24.04.2021 passed u/s 143(3) r.w.s 144B of the Income Tax Act, 1961 for the Assessment Year 2018-2019 in ITBA/AST/S/143(3)/2021-2022/1032663766(1) and consequently direct the First Respondent to complete the fresh assessment for the assessment year 2018-2019 after granting reasonable / sufficient opportunity of hearing.

For Petitioner : Mr.A.S.Sriraman
For Respondents: Mrs.Hema Muralikrishnan
Senior Standing Counsel

ORDER

The petitioner has challenged the Impugned Assessment Order dated 24.04.2021 for the Assessment Year 2018-2019 passed by the first respondent primarily on the ground that the time given to the petitioner to respond to the Show Cause Notice / Draft Assessment Order which preceded the impugned order was limited and that the petitioner in any event could uploaded the reply.

2. It is the case of the petitioner that the petitioner had requested the respondent for a personal hearing. However, the respondents straight away proceeded to reject the request of the petitioner stating that the Assessment would get time barred and therefore the first respondent was constrained to pass the Impugned Assessment order without a personal hearing through video conferencing.

3. The learned counsel for the petitioner further submits that in the Show Cause Notice dated 19.04.2021, Draft Assessment Order was attached whereas in the impugned order certain other aspects were sought to be included and therefore the petitioner was allowed to make representation before the respondent, the petitioner cannot be said to have been given a proper opportunity to defend himself.

4. It is further submitted that as per Section 144 B(VII) the Competent Authority to decide whether the request for personal hearing has to be given or rejected is the Chief Commissioner or the Director of General in charge of the Regional Faceless Assessment Centre and in this case, the respondent has taken the decision himself which is contrary to the aforesaid section.

5. It is therefore submitted that the impugned order is liable to be quashed and the case is remitted back to the respondent to pass a speaking order.

6. The learned counsel for the petitioner has also fairly admitted since the limitation under Section 246A of the Income Tax Act, 1961 was expiring in view of the extension given, the petitioner has also filed an Appeal before the Appellate Commissioner on 14.08.2021.

7. It is submitted that the Appellate Commissioner has no power to grant stay and therefore the Appellate remedy before the Appellate Commissioner is partially illusory and prejudicial to the petitioner as the petitioner will loose one appellate remedy on merits.

8. Countering the arguments advanced by the learned counsel for the petitioner, the learned Senior Standing Counsel for the respondent submits that the petitioner having opted to file an Appeal before the Appellate Commissioner under Section 246A of the Income Tax Act, 1961 cannot maintain this writ petition and it is therefore submitted that this writ petition is liable to be dismissed.

9. The learned Senior Standing Counsel for the respondent further submits that the petitioner is not without any remedy and filed application before the respondent under Section 220 of the Income Tax Act, 1961 for pending disposal of the said petitioner to stay the recovery proceedings.

10. Heard the learned counsel for the petitioner and the learned Senior Standing counsel for the respondents. I have perused the impugned order and the communication proceedings of the impugned order.

11. There is no doubt that the time granted to the petitioner was not sufficient and that the request of the petitioner for video conference has also been rejected by the respondent which prima facie appears to be contrary to Section 144B(VII) of the Income Tax Act, 1961.

12. The fact that the petitioner has already filed a Statutory Appeal makes it clear that the petitioner has a second thought now by invoking the jurisdiction of this Court under Article 226 of the Constitution of India. It is impermissible, particularly in the light of the fact that the petitioner opted

to file an Appeal during the month of August 2021. There is a considerable lapse of time while filing this Writ Petition. Therefore, this writ petition is liable to be dismissed.

13. However, considering the fact that the order has also been passed in a hurry to ensure that the Assessment does not get time barred, I am inclined to grant interim protection to the petitioner for a period of four weeks from today to enable the petitioner to file appropriate Application under Section 220 of the Income Tax Act, 1961 before the respondent and for the respondent to pass appropriate orders to protect the interest of the pending disposal of the petitioner.

14. Since the Appellate Commissioner is not a party to the proceedings the Appellate Commissioner is suo-moto impleded as a Respondent No.4 in this writ petition. The Appellate Commissioner shall pass appropriate orders in the appeal filed by the petitioner on 14.08.2021 within a period of three months from the date of receipt of a copy of this order.

15. Accordingly, this writ petition stands disposed of with the above observations. No costs. Consequently, the connected Writ Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CS-II)

//True copy//

Sub Assistant Registrar

rgm/jas

To

1. The Assistant Commissioner of Income Tax,
   National e-Assessment Centre, Delhi,
   2nd Floor, E-Ramp, Jawaharlal Nehru Stadium,
   Delhi – 110 003.

2. The Deputy Commissioner of Income Tax,
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+1 CC to The Government Pleader sr 7304.

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SSD(CO)
SP(24/02/2022)