BEFORE THE MADURAI BENCH OF MADRAS HIGH Court
DATED : **03.09.2021**
CORAM
THE HON'BLE MR.JUSTICE R.SURESH KUMAR
W.P.(MD)No.15699 of 2021
and
W.M.P.(MD)No.12654 and 12656 of 2021

DRA SP VM Joint Venture,
Rep. by its Authorized Signatory. ... Petitioner

-Vs-

The Additional/Joint/Deputy/
Assistant Commissioner of Income Tax/
Income Tax Officer,
National e-Assessment Centre,
Delhi. ... Respondent

Prayer: Writ Petition filed under Article 226 of Constitution of India, to issue a Writ of Certiorari, calling for the records pertaining to the impugned order passed by the respondent herein in DIN:ITBA/AST/S/143(3)2021-22/1032562612(1), dated 20.04.2021 and quash the same.

For Petitioner : Mr.T.Bashyam
For Respondent : Mrs.S.Srimathy
Standing Counsel

ORDER

The prayer sought in this Writ Petition is for a Writ of Certiorari, calling for the records pertaining to the impugned order passed by the respondent herein in DIN:ITBA/AST/S/143(3)2021-22/1032562612(1), dated 20.04.2021 and quash the same.

2.It is the case of the petitioner that the petitioner is an assessee - AOP (Association of Persons) formed on 02.02.2018. The petitioner filed return of income tax for the assessment year 2018-19. The petitioner was however selected for scrutiny through CASS. Therefore, a notice under Section 143(2) of the Income Tax Act [hereinafter referred to as "Act" in short] dated 23.09.2019 was issued to the petitioner. The petitioner also had given reply on 03.10.2019.

3.Subsequently, a notice was issued on 18.03.2021 under Section 142(1) of the Act to the petitioner. However, the said notice has not been replied by the petitioner. On what plausible reason, the petitioner has not chosen to give reply to the notice of respondent dated 18.03.2021 has been stated either in the affidavit or during the course of arguments advanced by the learned counsel for the petitioner that due to Covid-19 and for other personal reasons, the petitioner could not make a reply to the show cause notice dated 18.03.2021. Ultimately, the revenue passed the assessment order on 20.04.2021. Challenging the same, the present Writ Petition has been filed.

4.When a specific question was posed to the learned counsel appearing for the petitioner as to why the petitioner has not chosen to file an appeal against the impugned order of assessment dated 20.04.2021, the learned counsel for the petitioner would submit that there is no difficulty in challenging the assessment order, which is impugned herein on merits before the appellate authority and the petitioner has chosen to approach this Court by filing the present writ petition on the ground that no proper opportunity was given to the petitioner before passing impugned order. Therefore, on the ground of violation of principles of natural justice, the petitioner has invoked the extraordinary jurisdiction of this Court by filing the present writ petition under Article 226 of Constitution of India, he contended.

5.I have gone through the records filed before this Court, where it is found that, notice was already issued on 23.09.2019 under 143(2) of the Act, that was also claimed to have been replied by the petitioner. Copy of the reply has been filed in typeset of papers, where no exact date of reply has been made. Be that as it may, subsequently, a notice was issued under Section 142(1) of the Act on 18.03.2021, wherein the respondent directed the petitioner to furnish or cause to be furnished on or before 24.03.2021, the accounts and documents specified in the annexure to the notice. However, this notice has not been admittedly replied by the petitioner, for which even though Covid-19 reason has been stated, this Court finds it difficult in favour of the petitioner because during March first, second and third weeks of 2021, Covid-19 was not that much serious in this part of the country.

6.If at all there was specific reason for the petitioner for not responding to the notice dated 18.03.2021, the petitioner could have sent an e-mail communication to the respondent stating the said reason and seeking for a small adjournment or time, within which, he can file the documents. However, even that attempt has not been taken by the petitioner.

7.When that being the factual matrix, it cannot be canvassed by the learned counsel for the petitioner that no opportunity was given to the petitioner in this writ petition. Therefore, this Court finds absolutely no merits on the part of the petitioner to approach this Court by invoking Article 226 of the Constitution, by filing the present writ petition. Instead, the petitioner can very well file an appeal before the appellate authority under the provisions of the Act, as against the impugned order of assessment.

8. In that view of the matter, this Writ Petition fails and accordingly, this Writ Petition is dismissed, however with liberty to the petitioner to challenge the impugned order before the appropriate forum, in the manner known to law. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (T & P)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

pnm/sm

Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

TO

The Additional/Joint/Deputy/
Assistant Commissioner of Income Tax/
Income Tax Officer,
National e-Assessment Centre,
Delhi.

+1 CC to M/s.S.SRIMATHY, Advocate (SR-28173[F] dated 06/09/2021)

Order made in
W.P.(MD)No.15699 of 2021
03.09.2021

DJ(CO)
RS/JC (01.11.2021) 3P 3C