IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.01.2022

CORAM

THE HON'BLE MR.JUSTICE C.SARAVANAN

W.P.NO.177 OF 2022
AND
W.M.P.NOS.210 & 211 OF 2022

(THROUGH VIDEO CONFERENCING)

Selva Stone Export Private Limited,
Represented by its Managing Director,
Thiru.G.Selvaraj,
S/o.Thiru.Govinda Chetty,
No.27-A, Jagadevi Road,
Chennai Bye Pass, Krishnagiri - 635 104.

... Petitioner

Vs.

The Assistant Commissioner of Income Tax,
Central Circle,
Income Tax Office,
No.3, Gandhi Road,
Salem - 636 007.

... Respondent

Prayer:

Writ Petition filed under Article 226 of Constitution of India, for issuance of a Writ of Certiorarified Mandamus calling for the records in DIN: ITBA/AST/S/143(3)/2021-2022/1036092691 (1) dated 30.09.2021 on the file of the respondent relating to the Assessment Year 2019-2020 and quash the same.

For Petitioner : Mr.M.P.Senthil Kumar

For Respondent : Mr.A.P.Srinivas
Senior Standing Counsel

ORDER

Mr.A.P.Srinivas, learned Senior Standing Counsel takes notice on behalf of the respondent.

2. The petitioner has challenged the Impugned Assessment Order dated 30.09.2021 for the Assessment Year 2019-2020. It is the specific case of the petitioner that the petitioner has earlier issued with a notice under Section 143(2) of the Income Tax Act, 1961 on 29.09.2020. However, the notice did not contain any details and therefore the petitioner responded on 16.10.2020 and informed the respondent that the petitioner is willing to co-operate if information called for is specified.

3. The learned counsel for the petitioner submits that thereafter the petitioner was issued with a notice under Section 142(1) of the Income Tax Act, 1961 on 19.02.2021 to which, the petitioner replied on 05.04.2021 and on 09.04.2021.

4. It is submitted that thereafter there was no response and on 06.09.2021 a notice under Section 129 of the Income Tax Act was issued regarding change of incumbent and thereafter the impugned order has been passed.

5. It is submitted that the impugned order has been passed without considering the details furnished by the petitioner in their response dated 05.04.2021 and 09.04.2021. It is submitted that the impugned Assessment Order has been passed only with a view to complete the assessment to avoid lapsing of the assessment. He therefore submitted that the impugned order was liable to be interfered by quashing the same and remitting the case back to the respondent to pass appropriate orders on merits.

6. Opposing the prayer, the learned Senior Standing Counsel for the respondent submits that the assessments were completed in terms of Section 282 read with Section 127 of the Income Tax Act, 1961 and the assessments were completed electronically as is mandated under the aforesaid provisions. It is submitted that the petitioner has not filed documents called for and therefore there is no merits in this writ petition.

7. The learned Senior Standing Counsel for the respondent further submits that the petitioner has an alternate efficacious remedy inasmuch as the impugned order has discussed the facts that the petitioner has not filed the required documents which has led to be passing of the impugned order. He therefore submits that the writ petition is liable to be dismissed.

8. The learned Senior Standing Counsel for the respondent submits that the information furnished by the petitioner in response to notice issued under Section 142(1) of the Income Tax Act, 1961 was incomplete and therefore the impugned order has been passed. It is further submitted that the impugned order

has been passed in accordance with Note on e-proceedings which was appended to a notice issued under Section 143(2) of the Income Tax Act, 1961 dated 29.09.2020. It is therefore submitted that the petitioner has an alternate remedy and therefore the petitioner has to work out the remedy before the Appellate Commissioner in accordance with law under Section 246A of the Income Tax Act, 1961. The learned Senior Standing Counsel for the respondent further submits that the order is dated 30.09.2021 and therefore the writ petition is liable to be dismissed on account of latches.

9. By way of rejoinder, the learned counsel for the petitioner submits that the petitioner was unaware of the impugned order dated 30.09.2021 until the receipt of e-mail dated 16.12.2021 enclosing copies of recovery notice.

10. The learned Senior Standing Counsel for the respondent further submitted that Section 282 of the Income Tax Act, 1961 read with Rule 127 of the Income Tax Rules mandates service of notice and a specific method has been prescribed and therefore it is not open for the petitioner to say that the petitioner was unaware for passing of the impugned order on 30.09.2021.

11. As far as the merits is concerned, the learned Senior Standing Counsel for the respondent submits that the Assessing Officer has come to a conclusion on facts based on the available records that were furnished by the petitioner in response to notices vide e-mail dated 05.04.2021 and on 09.04.2021 and therefore the petitioner has to work out the remedy only before the Appellate Commissioner.

12. I have considered the arguments advanced by the learned counsel for the petitioner and the learned Senior Standing Counsel for the respondent. I have also perused the impugned order and the communications which preceded the notices issued to the petitioner under Section 282 of the Income Tax Act, 1961 has been amended and substituted with effect from 01.10.2009 for giving effect to the aforesaid provision. Rule 127 of the Income Tax Rules reads as under:-

> "127.Service of notice, summon, requisition, order and other communication:
>
> 127(1). For the purpose of sub-section (1) of Section 282, the address (including the address for electronic mail or electronic mail message) to which a notice or summons or requisition or order or any other communication under the Act (hereafter) in this rule referred to as "communication") may be delivered or transmitted shall be as per sub-rule (2)."

13. Therefore, it is not open for the petitioner to say that the petitioner was unaware of the passing of the impugned order dated 30.09.2021. Whether the information furnished by the petitioner has been correctly interpreted by the respondent while passing the impugned order is on the merits, correctness of which will have to be tested only by the Appellate Commissioner. Further, the impugned order is dated 30.09.2021. However, this writ petition has been filed only on 04.01.2022 after the limitation for filing statutory appeal would have expired.

14. Considering the fact that the limitation prescribed would have already expired for filing the appeal before the Appellate Commissioner, I am inclined to dispose this writ petition by directing the petitioner to file a statutory appeal before the Appellate Commissioner under Section 246A of the Income Tax Act, 1961 within a period of thirty days from the date of receipt of a copy of this order.

15. In case the appeal has to be filed through online, the respondent is directed to facilitate the same by issuing suitable instructions to allow the petitioner to file such appeal through online. Otherwise, the petitioner is directed to file statutory appeal within the aforesaid period.

16. If such appeal is filed before the Appellate Commissioner, the Appellate Commissioner shall consider the appeal of the petitioner on merits and dispose the same in accordance with law within a period of thirty days from the date of receipt of such appeal.

17. This Writ Petition stands disposed of with the above observations. No costs. Consequently, connected Writ Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

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To

The Assistant Commissioner of Income Tax,
Central Circle,
Income Tax Office,
No.3, Gandhi Road,
Salem - 636 007.

+1cc to Mr.G.Baskar, Advocate, S.R.No.2425
+1cc to Mr.A.P.Srinivas, Advocate, S.R.No.2684

W.P.No.177 of 2022
and
W.M.P.Nos.210 & 211 of 2022

PCH(CO)
PM/07/02/2022