IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.02.2022

CORAM :

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

Writ Petition No.3833 of 2022
and W.M.P.Nos.3965 and 3969 of 2022

Chandrasekaran Ragupati ... Petitioner

-Vs-

1.The Central Board of Direct Taxes
Represented by its Chairperson
Department of Revenue – Ministry of Finance
Government of India, New Delhi.

2.The Additional / Joint / Deputy / Assistant
Commissioner of Income Tax / Income Tax Officer
National Faceless Assessment Centre,
Delhi. ... Respondents

Prayer : Writ Petition under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus calling for the records on the file of the 2nd respondent and quash the impugned order in ITBA/AST/S/143(3)/2021-22/1034193497(1) dated 14.07.2021 passed by the 2nd respondent as illegal and consequently direct the 2nd respondent to complete the fresh assessment for the assessment year 2018-19 after granting reasonable / sufficient opportunity to upload the document and hearing.

For Petitioner : Mr.R.Sivaraman

For Respondents : Mr.A.N.R.Jayapratap
Junior Standing Counsel

O R D E R

The prayer sought for herein is for a Writ of Certiorarified Mandamus calling for the records on the file of the 2nd respondent and quash the impugned order in ITBA/AST/S/143(3)/2021-22/1034193497(1) dated 14.07.2021 passed by the 2nd respondent as illegal and consequently direct the 2nd respondent to complete the fresh assessment for the assessment year 2018-19 after granting reasonable / sufficient opportunity to upload the document and hearing.

2. There has been a proceedings for scrutiny assessment for the assessment year 2018-19 under Section 143 of the Income Tax Act, 1961 (In short 'the Act'). In this regard, a show cause notice was issued to the petitioner on 31.05.2021 giving time upto 11.06.2021 to respond. Since it was taken up through Faceless Assessment Scheme under Section 144B of the Income Tax Act, 1971, necessarily the petitioner / assessee has to upload the documents only through the web portal.

3. However, it is the definite case of the petitioner that, though sincere attempt has been made by the petitioner to upload the documents, due to some technical glitches in the web portal, the petitioner/assessee could not upload the documents and reply. Therefore, on the last date ie., on 11.06.2021, the petitioner has sent an e-mail to the following effect to the respondents.

> "This is with reference to the notice ITBA/AST/F/143(3)(SCN)/2021-22/1033176377(1) dated 31.05.2021 in the case of Sri.Chandrasekaran Raghupati PAN AHKPR4426N Assessment Year 2018-19. As we are unable to upload the enclosed documents in the e-filing website we are forwarding these documents to both email I.Ds in order to substantiate that we have complied with the above referred above. We shall however file these documents on e-filing website also as soon as it becomes operational."

4. In fact, to the said email of the petitioner dated 11.06.2021, the Revenue has responded through their mail on 12.06.2021, which reads thus,

> "Kind reference is invited to your trailing e-mail on the above subject.
> In this regard, you are requested to submit the replies through efiling portal as per the Faceless Assessment Scheme – 2019 so that the reply reaches the Faceless Assessing Officer. The NaFAC (NeAC) has no knowledge of who is the Faceless AO in your case. The reply may be uploaded when the efiling site starts working."

5. Since the Revenue has stated that the web portal started functioning, the petitioner, subsequently also tried to

upload the documents. However, upto September 2021, the petitioner could not upload the reply along with the documents pursuant to the show cause notice, as the technical glitches continued.

6. However, on 14.07.2021, without the reply of the assessee, the Revenue proceeded to finalize the assessment and the assessment order under Section 143(3) read with Section 144B of the Act was passed. Aggrieved by the same, the petitioner has filed the present writ petition seeking the aforesaid prayer.

7. Reiterating the aforesaid, Mr.R.Sivaraman the learned counsel for the petitioner would submit that, only because of the technical glitches in the web portal of the respondent Revenue, within the time stipulated the petitioner, though made sincere attempts, he could not upload the documents and this has in fact been communicated to the Revenue, which they acknowledged and in fact intimated the petitioner to upload the same once the system starts functioning.

8. When that being so, though the system was not working upto September 2021, in the meanwhile since the impugned assessment order has been passed, the same is vitiated, as without giving an opportunity to the petitioner since the order has been passed, it is in glaring violation of the principles of natural justice. Therefore, on that ground the petitioner has approached this Court seeking relief.

9. Mr.A.N.R.Jayapratap, learned Standing Counsel appearing for the respondent Revenue would submit that, it is not upto September 2021 the web portal was not functioning as has been claimed by the petitioner. However, even though there were some technical glitches till June 2021, subsequently in July 2021 it started functioning. Therefore, if at all the petitioner wanted to reply, he could have uploaded the documents in the month of July 2021 itself.

10. I have considered the rival submissions made by the learned counsel on either side and have perused the materials placed on record.

11. It is the admitted case on the part of the Revenue that, on the last date ie., on 11.06.2021, which was given to the petitioner to reply ie., upto which the web portal of the respondent was not functioning because of technical glitches. This has been admitted by the communication of the Revenue dated 12.06.2021.

12. Subsequently also, though it is stated by the learned Standing Counsel that, sometime in July 2021 it started functioning, it is the case of the petitioner that till September 2021, it was not working.

13. Assuming that the web portal started functioning from September 2021, from which date exactly it started working without any glitches could not be ascertained now and moreover, in the meanwhile since the order of assessment has been passed on 14.07.2021, without waiting for the reply to be submitted by the petitioner after the web portal started functioning, the said order which is now impugned herein, in the considered opinion of this Court, is certainly vitiated because the chance of giving reply by the petitioner since has been denied, or the Revenue has not waited till the technical glitches are resolved, enabling the petitioner to make a reply before which as the Revenue has come forward to pass the order on 14.07.2021, this Court has no hesitation to hold that the said order does not stand in the legal scrutiny.

14. In the result, this writ petition is disposed with the following order. No costs. Consequently, connected miscellaneous petitions are closed.

- That the impugned order in ITBA/AST/S/143(3)/2021-22/1034193497(1) dated 14.07.2021 passed by the 2nd respondent is set aside.
- The matter is remitted back to the respondents for reconsideration. While reconsidering the same, the respondents shall give a fresh notice to the petitioner giving time to reply either through E-assessment system under Section 144B or otherwise and thereafter, after giving such opportunity to the petitioner for making his reply and on filing of the documents, the assessment can be proceeded and final order can be passed thereafter.

Sd/-
Assistant Registrar(CS-V)

//True Copy//

Sub Assistant Registrar

KST

To

1.The Chairperson
Central Board of Direct Taxes
Department of Revenue - Ministry of Finance
Government of India, New Delhi.

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

W.P.No. 3833 of 2022

BS(CO)
GN(21/03/2022)