IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.03.2022

CORAM :

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

Writ Petition Nos.5911 & 5914 of 2022
and W.M.P.Nos.6007, 6012, 6013 & 6014 of 2022

Anamallais Bus Transports P Ltd
Rep.by its Director, 92, Nachimuthu Gounder
Street, Coimbatore 642 002, PAN AAACU3310N ... Petitioner

-Vs-

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

2. The Joint Commissioner of Income Tax
   Corporate Range, Income Tax Department
   Main Building, 63, Race Course Road
   Coimbatore – 641 018.

3. The Principal Commissioner of Income Tax
   Coimbatore-1, Income Tax Department
   Main Building, 63, Race Course Road
   Coimbatore-641 018. ... Respondents

Prayer in W.P.No.5911 of 2022 : Writ Petition under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari to call for the records of the writ petitioner on the file of the respondents and to quash the impugned order passed u/s.271D of the Income Tax Act, 1961 dated 12.02.2022 in DIN and Order No.ITBA/PNL/F/271D/2021-22/1039678110(1) for the assessment year 2018-19.

Prayer in W.P.No.5914 of 2022 : Writ Petition under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari to call for the records of the writ petitioner on the file of the respondents and to quash the impugned order passed u/s.271E of the Income Tax Act, 1961 dated 15.02.2022 in DIN and Order No.ITBA/PNL/F/271E/2021-22/1039783085(1) for the assessment year 2018-19.

For Petitioner : Mr.A.S.Sriraman

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

ORDER

The prayer sought for herein in these writ petitions are for Writ of Certiorari to call for the records of the writ petitioner on the file of the respondents and to quash the impugned order passed u/s.271D of the Income Tax Act, 1961 dated 12.02.2022 in DIN and Order No.ITBA/PNL/F/271D/2021-22/1039678110(1) and the order passed u/s.271E of the Income Tax Act, 1961 dated 15.02.2022 in DIN and Order No.ITBA/PNL/F/271E/2021-22/1039783085(1) respectively for the assessment year 2018-19.

2. In respect of the first writ petition, for the assessment year 2018-19, a proceedings was initiated under Section 271D of the Income Tax Act, 1961 (In short 'the Act') against the petitioner/assessee for the alleged violation of Section 269SS of the Act. In the second writ petition, for the same assessment year, such a proceedings was initiated under Section 271E of the Act for the alleged violation of Section 269T of the Act.

3. These proceedings were issued against the petitioner by issuing a notice dated 05.08.2021. In response to the same, the petitioner gave a reply on 19.08.2021. Having considered the said reply, further notice was issued by the Revenue on 25.01.2022, where time was given upto 23:59 Hrs on 28.01.2022 to the assessee to give their response along with supporting documentary evidence if any, electronically through the account of the assessee in the E-Filing website.

4. Since the said notice dated 25.01.2022 has given only shorter time of only two days or 48 hours, the petitioner, within the said shortest time could not reply to the notice. Therefore, on 28.01.2022, the petitioner had made a request through the electronic portal of the Revenue to give at least time till 10.02.2022. Though such a request has been made electronically and it is evident that such a request has been made to the Revenue to give such time to respond to the second show cause notice dated 25.01.2022, no such adjournment or time was given, as no such communication to that effect has been received by the petitioner in either mode. However, on 12.02.2022 and 15.02.2022 respectively, the impugned orders imposing a penalty under Section 271D and 271E of the Act has been issued. Therefore, challenging the same, Mr.A.S.Sriraman, learned counsel for the petitioner would submit that, if at all the respondent Revenue wants to give time as sought for by the petitioner upto 10.02.2022, a communication could have been

issued. Without giving any such communication since the orders have been passed, it cannot be construed that the Revenue has given the time as sought for by the petitioner/assessee nor the Revenue has given enough time to respond, since the second notice dated 25.01.2022 gave only 48 hours upto the midnight of 28.01.2022, within which time the petitioner assessee could not respond for the reasons stated in the request application for adjournment. Therefore, the non-consideration of this request would amount to violation of principles of natural justice and therefore, on that ground the learned counsel seeks the indulgence of this Court against the impugned orders.

5. However, Mr.A.N.R.Jaya Pratap, learned Junior Standing Counsel appearing for the respondent, on instructions would submit that, the first notice had already been issued on 05.08.2021 for which reply has been given on 19.08.2021. Still, in order to give one more chance for filing any supporting documents, this second notice dated 25.01.2022 has been given. Therefore, it cannot be complained by the petitioner that only two days time was given to respond.

6. Assuming that before 28.01.2022 if the petitioner could not reply and therefore on that ground he seeks for time upto 10.02.2022, that was also given to the petitioner as the orders now passed are only on 12.02.2022 and 15.02.2022. Therefore, the plea raised by the petitioner that the request for time upto 10.02.2022 has not been given cannot be accepted. Therefore, on that ground, the impugned orders cannot be assailed, he contended.

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

8. The issue raised in these writ petitions is in a very narrow compass, where the petitioner assessee, in response to the notice dated 25.01.2022 had sought for time upto 10.02.2022. The reason for seeking such time upto 10.02.2022 is because the petitioner assessee being a Company was busy in filing the return for the year concerned.

9. Moreover, in the notice dated 25.01.2022 only 48 hours had been given as Para 4 of the said notice makes it clear that, on or before 28.01.2022 23:59 Hrs, the response shall be made by the assessee electronically. Within the said shortest span of time of 48 hours, normally it cannot be expected that the assessee would respond. Therefore, the petitioner/assessee sought for a reasonable time of ten days, which could have been given by the respondents.

10. Even though now a stand has been taken by the learned Standing Counsel for the Revenue that, after the ten days time only the impugned orders have been passed on 12.02.2022 and 15.02.2022, it cannot be accepted because, the assessee cannot presume that the plea raised by the petitioner for giving time has been accepted by the Revenue. If at all the said plea was accepted by the Revenue they could have responded by sending a reply communication to the assessee, of course through electronic mode, stating that the time sought for by the petitioner has been given upto 10.02.2022. In the absence of any such communication from the Revenue, it cannot be accepted that the plea raised by the petitioner seeking ten days time was given by the Revenue.

11. Therefore, on that ground, this Court feels that the action on the part of the Revenue in passing the impugned orders imposing penalty against the petitioner without giving such an opportunity sought for by the petitioner would amount to violation of principles of natural justice. Therefore, on that ground, the impugned orders are liable to be interfered with.

12. In the result, the following orders are passed in these writ petitions.

- That the respective impugned orders dated 12.02.2022 and 15.02.2022 are hereby set aside and the matters are remitted back to the respondents for reconsideration.

- While reconsidering the same, notice giving two weeks time clearly indicating the date on or before which response is expected from the assessee, shall be served on the petitioner/assessee and on receipt of the same, the petitioner/assessee shall respond to such notice, which shall be the final opportunity given to the petitioner/assessee and thereafter it is open to the Revenue to proceed further and pass final orders.

12. With the above observations and directions, these writ petitions are disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

KST

To

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

2. The Joint Commissioner of Income Tax
   Corporate Range, Income Tax Department Main Building,
   63, Race Course Road, Coimbatore – 641 018.

3. The Principal Commissioner of Income Tax
   Coimbatore-1, Income Tax Department Main Building,
   63, Race Course Road, Coimbatore-641 018.

+1cc to M/s A.P.srinivas, Senior Standing Counsel, S.R.No.18488

W.P.Nos.5911 & 5914 of 2022

SKM(CO)
CT 28/04/2022