IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.06.2022

CORAM

THE HONOURABLE **DR. JUSTICE ANITA SUMANTH**

W.P.No.7838 of 2021
&
WMP.Nos.8362 & 8363 of 2021

M/s.Arun Excello Homes Pvt. Ltd.
Represented by its Managing Director
Mr.P.Suresh
18 Bhattad Towers, West Cott Road
Royapettah, Chennai – 600 014. ... 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 e-assessment Centre,
Delhi ... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, to issue aWrit of Certiorarified Mandamus, calling for the records on the file of the 2nd respondent in PAN:AAGCA6559H in passing the impugned order in ITBA/AST/S/143(3)/2020-21/1031404322(1) for the Assessment Year 2018-19 dated 11.03.2021 under Section 143(3) read with Section 143(3A) & 143(3B) of the Income Tax Act,1961 and quash the same as perverse, illegal and arbitrary and consequently direct the 2nd respondent to provide a reasonable opportunity of being heard.

For Petitioner : Mr.R.Sivaraman

For Respondents : Mrs.Hema Muralikrishnan
Senior Standing Counsel

ORDER

The challenge in this writ petition is to order of assessment dated 11.03.2021 in respect of assessment year 2018-19 passed in terms of notification dated 12.09.2019, that governed the conduct of assessments finalized during the period 12.09.2019 till 01.04.2021.

2. The main plank of challenge is the lack of opportunity provided to the assessee/petitioner prior to framing of the impugned assessment. Admittedly, the petitioner has been in receipt of show cause notice dated 22.03.2021, calling upon the assessee to file a reply through the registered e-filing account on or before 23:59 hours of 22.06.2021.

3. The Assessing Authority granted the following options to the assessee:

> *"3. Kindly submit your response through your registered e-filing account at www.incometaxindiafiling.gov.in by 23.:59 hours of 2/02/2021, whereby you may either:-*
>
> *a. accept the proposed modification; or*

> *b. file your written reply objecting to the proposed modification; or*
>
> *c. if required, you may request for personal hearing so as to make oral submissions or present your case after filing of written reply. On approval of the request, personal hearing shall be conducted exclusively through video conference."*

4. In the present case the petitioner has filed response dated 22.06.2021 within the time frame provided, wherein the assessee seeks a personal hearing through video conferencing. The opportunity for personal hearing has, admittedly, not been afforded as sought for and hence this writ petition.

5. Though a counter affidavit has not been filed, Mrs.Hema Muralikrishnan, learned Senior Standing Counsel is ready with instructions. The stand of the Income tax Department is that an opportunity of personal hearing has to be availed by way of a specific provision, contained in the Departmental website.

6. Learned counsel for the petitioner would submit that such a specific facility by way of a button to be activated for the purpose, was not available at that period in time and had been provided only later. That apart, since the petitioner had, in written submissions filed by way of response to the show cause notice, admittedly, sought an opportunity of personal hearing, as

offered by the Assessing Officer, it does not stand to reason that such request be ignored, on a mere technicality. In light of the discussion as aforesaid, the impugned order is set aside.

7. The Assessing Authority will proceed from the stage at which the assessment stood interrupted, by filing of this writ petition, which is the stage of personal hearing of the petitioner. He will thereafter formulate an assessment and both parties agree that a time frame of three (3) months be fixed for completing the proceedings. In fine, and in the interests of clarity, the assessing officer will (i) issue notice of personal hearing to the petitioner (ii) hear the petitioner (iii) pass an order of assessment, all within 90 days from the date of receipt of this order.

8. This writ petition is allowed in the above terms. No costs.

13.06.2022

Index : Yes/No
Speaking Order/Non speaking Order
nst

To

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 e-assessment Centre,
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DR.ANITA SUMANTH, J.

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