IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.04.2022

CORAM :

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

Writ Petition No.9588 of 2022
&
W.M.P.Nos.9323 & 9324 of 2022

1. Golden Homes Private Limited,
   Rep. by its Managing Director,
   J.Rajkumar Balsingh,
   S/o.G.Jaisingh,
   AC-63, 5th Avenue, Anna Nagar,
   Chennai-600 040. ... Petitioner

-Vs-

1. The Income Tax Officer,
   National Faceless Assessment Centre,
   IncomeTax Department,
   Ministry of Finance,
   Room No. 401, 2nd Floor, E-Ramp,
   Jawaharlal Nehru Stadium,
   Delhi-110 003.

2. The Assistant Commissioner of Income Tax,
   Corporate Circle 2(1),
   Room No: 511, Wanaparthy Block,
   V Floor, Aayakar Bhavan,
   No.121, Mahatma Gandhi Road,
   Nungambakkam, Chennai-600 034. ... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari, calling for the records in ITBA/AST/S/147/2021-22/1041638732(1) dated 26.03.2022 on the file of the 1st Respondent relating to A.Y. 2017-18 and quash the same.

For Petitioner : Mr. G.Baskar

For Respondents : Mrs. Hema Muralikrishnan,
Senior Standing Counsel.

ORDER

The Petitioner is an assessee under the respondent, within the meaning of Income Tax Act 1961. In respect of the assessment for the Assessment Year 2017-18, though assessment is already over, they wanted to reopen it under Section 147 of the Act. Therefore, notice under Section 148 was issued, pursuant to which reasons were sought for and reasons were given, which have been objected by the petitioner assessee.

2. However, according to Mr.G.Baskar, learned counsel for the petitioner, the objection also has not been considered in proper prospective or no separate orders rejecting such objections have been passed as has been contemplated in GKN Drive shafts (India) Limited Vs. Income Tax Officer and others reported in (2003) 259 ITR 19 (SC) of the Hon'ble Supreme Court of India.

3. Subsequently, notice under section 142 (1) was issued and thereafter, show cause notice was issued on 21.03.2022, giving time to show cause on or before 24.03.2022 .

4. However, on the said date, i.e., on 24.03.2022, the petitioner sought for time till the next day, which he mentions as Saturday, i.e., 26.03.2022.

5. Thereafter on 26.03.2022 at 13.32 hours, the petitioner as assured has given an additional reply or input for the consideration of the Revenue through website. However, on the same day i.e., on 26.03.2022 at 17:25 hours, the Revenue has passed the assessment order which is impugned herein.

6. Learned counsel appearing for the petitioner points out that, within the one day time, i.e., Saturday which falls on 26.03.2022 as sought for by the petitioner assessee, it had filed the reply on 26.03.2022 itself, at 13:32 hours. However in the order impugned, it has been stated by the Revenue that, though one day time was sought for by the assessee, they have not filed the reply and therefore they passed an order of

assessment on 26.03.2022 at 17:25 hours itself. Therefore, it is blatent violation of principles of natural justice, despite the compliance made by the petitioner, as assured by them within the shortest time possible. Therefore, on that ground itself the impugned order is vitiated, he contended.

7. However, Mrs. Hema Muralikrishnan, learned Senior Standing Counsel appearing for the respondents would submit that, enough opportunities have already been given to the petitioner assessee, where, 142 (1) notice was issued, prior to which, 143 (2) notice was issued and thereafter final show cause notice was issued on 21.3.2022. Since the petitioner wanted only one day from 24.03.2022, naturally it falls on 25.03.2022, till such time, since no reply as assured by the petitioner assessee had been supplied or filed, only on the next day i.e., on 26.03.2022 the Revenue proceeded to pass the assessment order.

8. She would also submit that, moreover, since the last date, before which the assessment order shall be passed is 31.03.2022, therefore, in order to maintain the limitation period also, it become necessiated for the Revenue to pass orders on 26.03.2022, that too after giving the one day

time as sought for by the assessee. Therefore this case cannot be construed as a case violating the principles of natural justice, she contended.

9. I have considered the said rival submissions made by the learned counsels appearing for the parties and have perused the material placed before this Court.

10. The principles of natural justice is a hall mark of any judicial or quasi-judicial proceedings. That is the reason why law Courts have repeatedly held that, such a procedure, by giving fair opportunity of being heard to the person against whom, if any adverse order is going to be passed, must be strictly followed.

11. In this case, show cause notice was issued on 21.03.2022, where time was given only up to 24.03.2022, that itself is a very short time.

12. However, further time up to 26.03.2022 was asked for by stating that till Saturday, which falls on 26.03.2022. On that day, i.e., on

26.03.2022, at 13:32 hours, reply had been filed. However the same was not considered, even though after 4 hours at 17:25 hours on 26.03.2022, the order impugned has been passed. Therefore, this Court feels that, the Revenue could have waited for few hours and could have verified the web portal before passing or uploading the assessment order. Had they done this, they would have noticed the reply submitted by the petitioner assessee at 13.32 hours on 26.3.2022. This may be an error on the part of the Revenue and this can very well be construed as a violation of principles of natural justice. Therefore, this Court is inclined to dispose of this Writ Petition with the following order:

> The impugned order is set aside. The matter is remitted back to the respondents for reconsideration. While reconsidering the same, the reply submitted by the petitioner, dated 26.3.2022 or any other further input, the petitioner wants to supply, can be obtained and considered by the Revenue before passing the order of assessment, by giving an opportunity of being heard, if that is desired by the petitioner at the earliest.

13. With these directions, this writ petition is ordered accordingly.

No costs. Consequently, connected miscellaneous petitions are closed.

21.04.2022

sha/tvsn

To

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R.SURESH KUMAR, J.

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