IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.04.2022

CORAM

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

W.P.NO.10046 OF 2022
AND
W.M.P.NOS.9751, 9752 & 9757 OF 2022

Mr.Gauthamchand Mohanlall ... Petitioner

.Vs.

1. The Deputy Commissioner of Income Tax,
National e-Assessment Centre,
Delhi E-Ramp,
Jawaharlal Nehru Stadium,
Delhi – 110 003.

2. The Income Tax Officer,
Non Corporate Ward 1 (2),
Income Tax Department,
No.121, Mahatma Gandhi Road,
Nungambakkam,
Chennai – 600 034.

3. The Principal Commissioner of Income Tax-1,
Chennai,
Income Tax Department,
121, Mahatma Gandhi Road,
Chennai – 600 034. ... Respondents

PRAYER:-

Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus, to call for the records of the Writ Petitioner Company on the file of the First Respondent to quash the impugned order dated 30.03.2022 passed u/s 147 r.w.s.144 and 144B of the Act for the Assessment year 2015- 16 in ITBA/AST/S/147/2021-22/1042139283 (1) and consequently direct the first Respondent to complete the fresh assessment for the assessment year 2015-2016 after granting reasonable/Sufficient opportunity of hearing.

For Petitioner : Mr.A.S.Sriraman

For Respondents : Mr.D.Prabhu Mukunth Arunkumar
Junior Standing Counsel

O R D E R

The prayer sought for herein is for a Writ of Certiorarified Mandamus, to call for the records of the Writ Petitioner Company on the file of the First Respondent to quash the impugned order dated 30.03.2022 passed under Section 147 of the Income Tax Act, 1961, read with Sections 144 and 144B of the Act for the Assessment year 2015-16 in ITBA/AST/S/147/2021-22/1042139283 (1) and to direct the first Respondent to complete the fresh assessment for the assessment year 2015-16 after granting reasonable/Sufficient opportunity of hearing.

2. In respect of the Assessment Year 2015-16, since the petitioner has not filed return under the provisions of the Income Tax Act, 1961, [in short, 'the Act'] there was a notice issued under Section 148 of the Act with an intention to assess the petitioner under Section 147 of the Act.

3. Though such a notice was issued on 22.03.2021, the petitioner has chosen to file a return only on 21.02.2022. Thereafter, a reply has been filed by the petitioner on 28.02.2022. After considering the reply, there was a final show cause notice dated 24.03.2022 along with the draft assessment order, where, three days up to 27.03.2022 was given to the petitioner to respond. Further, since there was no response, the Revenue proceeded to pass the assessment order dated 30.03.2022, which is under challenge in this writ petition.

4. Mr.A.S.Sriraman, learned counsel for the petitioner, would submit that, though the petitioner has already communicated to the Revenue about the change of e-mail ID, subsequently also, all these communications including the show cause notice has been sent only to the old e-mail ID. Therefore, immediately the petitioner could not receive it and retrieve it from the web portal. Therefore, within the three days time given by the Revenue through the show cause notice dated 24.03.2022, the petitioner/assessee could not respond. Therefore, without giving a chance of responding to the final show cause notice, the Revenue since has passed the impugned assessment order dated 30.03.2022, it is vitiated, he contended.

5. I have heard Mr.D.Prabhu Mukunth Arunkumar, learned Junior Standing Counsel appearing for the Revenue, who would point out that, the petitioner has taken nearly about a year to respond to Section 148 notice and even thereafter, when show cause notice was issued, he has not chosen to give reply.

6. Ground now taken by the assessee that it was sent to the old e-mail ID is concerned, it is an e-mail ID of the Accountant of the petitioner/assessee, that was also given to the Revenue. Therefore, using that old E-mail ID only, these communications has been sent. Therefore, the learned Standing Counsel would submit that this case cannot be considered as a case, violating the principles of natural justice.

7. I have considered the said submissions made by the learned counsel appearing on both sides, whether it has been sent to the old e-mail ID or otherwise, only three days time was given between 24th March to 27th March 2022 to give reply for the show cause notice along with the proposal i.e., the Draft Assessment order. It has been pointed out that, there is a vast difference in addition, between the Draft Assessment order and the final assessment order, which is impugned herein, where, more than 12 Crores have been added, though the same has been given up in the Draft assessment order. Hence, the learned counsel appearing for the petitioner urges that the petitioner/assessee, if had been given a chance of repudiating the same as proposed through the Draft assessment order along with the show cause notice dated 24.03.2022, it would have been in a position to tell as to how this addition could not have been possible. Therefore, in order to give one such chance to the petitioner, this Court feels that the impugned order can be set aside and the matter can be remitted back to the respondent for reconsideration.

8. In that view of the matter, this Court is inclined to dispose of this writ petition with the following orders:

(i) That the impugned order is set aside and the matter is remitted back to the respondent for reconsideration. While reconsidering the same, the impugned show cause notice dated 24.03.2022 along with the Draft Assessment order shall be treated as a fresh notice with fresh Draft assessment order and accordingly, it is open to the petitioner/assessee to respond to the same by giving reply with documents, within a period of two weeks from the date of receipt of a copy of this order and thereafter, considering the said reply to be filed by the petitioner, it is open to the Revenue to proceed and to pass final assessment order.

9. With these directions, the writ petition stands disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

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To

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Chennai – 600 034.

+1cc to M/s.Hema Muralikrishnan, Advocate, S.R.No.28304
+1cc to Mr.S,Sridhar, Advocate, S.R.No.28964

W.P.NO.10046 OF 2022

AD(CO)
PBS/24/05/2022