IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.04.2022

CORAM:

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

WRIT PETITION NO.10132 OF 2022
AND
W.M.P.NOS.9823, 9825 AND 9826 OF 2022

EVOS Design Living Private Limited
3, Khader Nawaz Khan Road
Nungambakkam, Chennai - 600 006,
Represented by its Authorized Signatory
Mr.Ravee Raman Malhotra ... Petitioner

-Vs-

The Deputy Commissioner of Income Tax,
Corporate Circle – 2(1), 6th Floor,
Aayakar Bhavan – Wanaparthy Block,
121, Mahatma Gandhi Salai,
Nungambakkam, Chennai - 600 034. ... 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 comprised in the impugned assessment order bearing DIN and Letter No.ITBA/AST/S/147/2021-22/ 1042163039(1) dated 30.03.2022 and demand Notice bearing DIN and Notice No.ITBA/AST/S/156/2021-22/1042163363(1) dated 30.03.2022 issued by the respondent and quash the same as illegal arbitrary and unconstitutional and consequently direct the respondent to initiate fresh assessment in respect of the petitioner for A.Y. 2017-18 after providing an opportunity of hearing in respect of the assessment/reassessment of the petitioner under Sections 143 read with 147 and 148 of the Income Tax Act 1961.

For Petitioner : Mr.Vijay Narayan
Senior Counsel

For Respondents : Mrs.Hema Muralikrishnan
Senior Standing Counsel

O R D E R

The prayer sought for herein is for a Writ of Certiorarified Mandamus calling for the records comprised in the impugned assessment order bearing DIN and Letter No.ITBA/AST/S/147/2021-22/1042163039(1) dated 30.03.2022 and demand Notice bearing DIN and Notice No.ITBA/AST/S/156/2021-22/1042163363(1) dated 30.03.2022 issued by the respondent and quash the same as illegal arbitrary and unconstitutional and consequently direct the respondent to initiate fresh assessment in respect of the petitioner for A.Y. 2017-18 after providing an opportunity of hearing in respect of the assessment/reassessment of the petitioner under Sections 143 read with 147 and 148 of the Income Tax Act 1961.

2. This relates to Assessment Year 2017-18. The petitioner is an assessee under the respondent. In order to reopen the assessment under Section 147 of the Income Tax Act (In short 'the Act'), notice under Section 148 of the Act was issued, followed by the filing of the return by the assessee. At that time, on 17.02.2022, after the petitioner asked the reasons for reopening, reasons were given by the Revenue and objections were also raised by the assessee against the reasons given by the Revenue for reopening on 19.03.2022. Though such objections were raised, without deciding or disposing of the objections, the Revenue proceeded to issue a show cause notice on 25.03.2022 ie., final show cause notice along with the draft assessment order, whereby time was given to the assessee to reply by 27.03.2022. When the petitioner assessee asked for personal hearing by a request letter dated 28.03.2022, the Revenue, in response to the same, by a communication dated 29.03.2022 at 20:27 Hrs fixed the time for personal hearing at 09.30 A.M., on 30.03.2022.

3. Since the communication reached even through the web portal only on 29.03.2022 at 20:27 Hrs, it could not be noticed. Therefore, the next day morning, before opening the portal, the time granted ie., 09.30 a.m. on 30.03.2022 was over. Therefore, the Revenue closed the portal and proceeded to pass the assessment order on 30.03.2022 at 21:08 Hrs. Therefore, the impugned assessment order dated 30.03.2022 is challenged in this writ petition.

4. Mr.Vijay Narayan, learned Senior Counsel appearing for the assessee has first contended that, as per the procedure contemplated in GKN Driveshafts (India) Ltd -Vs- ITO (259 ITR 19 (SC), once the reasons are given, it may be objected by the assessee or noticee and once such objections are raised, since that is the question with regard to the jurisdiction, that should have been considered and disposed of. Without disposing

the objectons of the assessee, according to the learned Senior Counsel, the Revenue cannot go further by issuing a final show cause notice with the draft assessment order towards passing the final assessment order. In this case since such a disposal of objection has not been given, that is one of the grounds, which makes the entire proceedings infirm, he contended.

5. That apart, the learned Senior Counsel also pointed out that, when personal hearing was sought for on 28.03.2022, the reply for such request for personal hearing from the Revenue generated only on 29.03.2022 at 20:27 Hrs giving time on 30.03.2022 at 09.30 Hrs. However, before the petitioner could get access to the web portal, as next day morning that kind of access could be made, the time given by the Revenue was over according to them. Therefore, without giving an opportunity of personal hearing since the order impugned has been passed on 30.03.2022 at 21:08 Hrs, even on the ground of violation of principles of natural justice, the impugned order is vitiated. Therefore, for both these reasons, since the order cannot stand in the legal scrutiny, it could be interfered with and set aside, he contended.

6. However Mrs.Hema Muralikrishnan, learned Senior Standing Counsel appearing for the Revenue pointed out that, though reasons were revealed on 17.02.2022 by the Revenue in their reply dated 19.03.2022, the petitioner has not given any specific objections to the reasons revealed by the Revenue. Instead, the assessee had given response only to the notice dated 30.03.2022 and the notice dated 03.03.2022 passed under Section 143(2) of the Act.

7. When that being so, it cannot be construed that the reply dated 19.03.2022 as an objection specifically made by the assessee against the reasons revealed by the Revenue as contemplated underGKN Driveshafts (India) Ltd -Vs- ITO (259 ITR 19 (SC) case. Therefore, the said ground raised by the petitioner may not stand in the legal scrutiny, she contended.

8. Insofar as the personal hearing opportunity is concerned, since the last date ie., 31.03.2022 was fast approaching, as number of cases has to be dealt with by each of the Assessing Officer, such kind of short duration alone was possible to be given and despite that, between 9.30 A.M., and 9.50 A.M., on 30.03.2022 the Assessing Officer was waiting for personal hearing with the assessee, and since the assessee has not responded by coming through the web portal, there was no other option except to proceed with the assessment order and accordingly the assessment order was passed. Hence, even that ground raised by the petitioner's side may not stand in the legal scrutiny, she contended.

9. However Mr.Vijay Narayan, learned Senior Counsel, in reply to the said plea raised by the learned Standing Counsel for the Revenue on the point of no objection to the reasons would contend that, in the reply dated 19.03.2022 it has been specifically stated at Para 2 that the reasons for reopening of assessment proceedings communicated vide letter dated 17.03.2022 has not been extracted and for each of such reasons given by the Revenue, objections have been raised by way of reply dated 19.03.2022. Therefore, it cannot be stated that the assessee has not objected to the reasons specifically.

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

11. The first reason cited by the learned Senior Counsel that the specific objections given by the petitioner against the reasons for reopening under Section 148 has not been disposed of and it is mandated one as per the procedure contemplated under GKN Driveshafts (India) Ltd -Vs- ITO (259 ITR 19 (SC).

12. On a perusal of the available records, this Court is of the view that, such a procedure, as rightly pointed out by the Senior Counsel has not been followed here as there has been no specific disposal of the objections raised by the petitioner for the reasons given by the Revenue. Therefore, on that ground further proceedings which culminated in the present impugned order dated 30.03.2022 may be accepted to be infirm and the said issue can be decided in favour of the assessee.

13. For all these reasons as discussed above, this Court feels that the impugned assessment order dated 30.03.2022 may not be justifiable and sustainable. Hence, it is liable to be set aside.

14. In the result, the following order is passed.

- That the impugned order dated 30.03.2022 is set aside and the matter is remitted back to the respondent, where the stage where objections given by the petitioner for the reasons stated by the Revenue dated 17.03.2022 for reopening the assessment under Section 148 shall be re-processed, under which the objections raised by the petitioner shall be considered and decided by the Revenue within a reasonable time.

- If still the Revenue is of the view that the objection can be rejected, such an order with reasons may be passed and based on which, further remedy can be availed by the petitioner in the manner known to law.

- Depending upon such a decision with regard to the disposal of the objections raised by the petitioner, the further course of action to proceed with the assessment may be taken by the Revenue.

15. With the above observations and directions, this writ petition is disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

KST

To

The Deputy Commissioner of Income Tax,
Corporate Circle - 2(1), 6^{th} Floor,
Aayakar Bhavan - Wanaparthy Block,
121, Mahatma Gandhi Salai,
Nungambakkam, Chennai - 600 034.

+2ccs to Mr.Abishek Jenasenan, Advocate, S.R.No.28408
+1cc to Mrs.Hema Muralikrishnan, Advocate, S.R.No.27863

W.P.NO.10132 OF 2022

AD(CO)
PBS/23/05/2022