IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 25.04.2022

CORAM

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

W.P.No.9945 of 2022
and
W.M.P.Nos.9669 & 9672 of 2022

M/s.Abhiyantha Project Engineering Private Limited,
Represented by its Director Mrs.V.S.Ramya,
1st Floor, Shriram House, No.4, Burkit Road,
T.Nagar, Chennai - 600 017. ... Petitioner

Vs

The Additional/Joint/Deputy/Assistant Commissioner of Income Tax,
Income Tax Officer,
National Faceless Assessment Centre,
Ministry of Finance, Income Tax Department,
2nd Floor, Jawaharlal Nehru Stadium,
New Delhi - 110 003. ... Respondent

PRAYER: Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorari, calling for the records of the Respondent in the Impugned order dated 31.3.2022 with respect of PAN No.AAVCS2588K for Assessment year 2017-2018 bearing DIN:ITBA/AST/S/147/2021-2022/1042211026(1) and quash the same.

For Petitioner : Mr.P.J.Rishikesh

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

ORDER

The prayer sought for herein is for a Writ of Certiorari, to call for the records of the Respondent in the Impugned order dated 31.3.2022 with respect of PAN No.AAVCS2588K for Assessment Year 2017-2018 bearing DIN:ITBA/AST/S/147/2021-2022/1042211026(1) and quash the same.

2. In respect of the Assessment Year 2017-18, the Revenue wanted to reopen the assessment under Section 147 of the Income Tax Act, 1961, [in short, 'the Act']

3. Pursuant to which, notice was issued under Section 148 of the Act, thereafter, further notice was issued under Section 142 (2) of the Act, which was replied by the petitioner/assessee.

4. Thereafter, the Revenue proceeded to complete the assessment, before which, a final show cause notice dated 30.03.2022 was issued through e-governance on 30.03.2022 at 09:49 hours.

5. In the said notice, time was given to the petitioner/assessee to respond by 30.03.2022 at 23:59 hours.

6. Even it has been alerted by the Revenue to the petitioner by way of SMS. Subsequently thereafter, when the petitioner noticed that a final show cause notice was issued through e-governance and before even getting the same, the impugned order of assessment dated 31.03.2022 was issued. Therefore, on the ground that no proper opportunity was given with some breathing time to respond to the final show cause notice, the petitioner has challenged the impugned order in the present writ petition.

7. Heard Mr.P.J.Rishikesh, learned counsel for the petitioner, who by reiterating the aforestated, would submit that, morning, the show cause notice was issued and by the same day, they expected the reply, that too, after completing the procedure by SMS alert. Therefore, absolutely, there is no chance for the petitioner to reply. Hence, the order impugned is vitiated by virtue of the violation of principles of natural justice.

8. I have heard Mr.D.Prabhu Mukunth Arunkumar, learned Junior Standing Counsel, appearing for the Revenue, who would submit that, if at all the petitioner / assessee is having a grievance that, a final show cause notice has not been given with enough time to the petitioner to reply to the same, it had happened because of the limitation i.e., on or before 31st March 2022, it should have been issued by the shortest possible time, that was given to the petitioner/assessee, as in number of such cases, such kind of shorter time was only given.

9. I have considered the said submissions made by the learned counsel appearing on both sides and have perused the materials placed before this Court.

10. As has been rightly pointed out by the learned counsel for the petitioner, a final show cause notice was issued only on 30.03.2022 at 09:49 hours, whereas, the time was given to the petitioner/assessee to raise objections on the same day i.e., on 30.03.2022 at 23:59 hours. Even before realizing that such notice has been issued to the petitioner/assessee because SMS alert has come later, the impugned order dated 31.03.2022 since has been passed, this Court feels that, it is a case of violation of principles of natural justice, insofar as that aspect of reply by the

petitioner to the final show cause notice is concerned, hence, the impugned order is liable to be interfered with.

11. In that view of the matter, this writ petition is disposed of with the following orders:

(i) That the impugned order is set aside and the matter is remitted back to the respondent for reconsideration.

(ii) In this context, it is open to the petitioner to treat the final show cause notice dated 30.03.2022 as a fresh show cause notice, against which, it is open to the petitioner to give reply within two weeks from the date of receipt of a copy of this order.

(iii) It is made clear that, no further notice would be given to the petitioner by the Revenue. Once a reply is given by the petitioner, after giving an opportunity of personal hearing to the petitioner either directly or through video conferencing, a final assessment order can be passed by the Revenue.

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

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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To

The Additional/Joint/Deputy/Assistant Commissioner
of Income Tax,
Income Tax Officer,
National Faceless Assessment Centre,
Ministry of Finance, Income Tax Department,
2nd Floor, Jawaharlal Nehru Stadium,
New Delhi - 110 003.

+1 cc to Mr.P.J.Rishikesh, Advocate Sr.NO.28303
+1 cc to Mr.Hema Muralikrishnan,Standing CounselSr.NO. 28311

W.P.No.9945 of 2022

SKM(CO)
A.SK(23/05/2022)