IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.04.2022

CORAM :

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

Writ Petition Nos.10129, 10135 & 10140 of 2022
and
W.M.P.Nos.9820, 9822, 9830, 9831, 9835 & 9836 of 2022

M/s.Pesco Beam Environmental Solutions Private Limited
Represented by its Executive Director Mr.A.Shankar,
136, Thodugadu Village, Thiruvallur Road,
Sriperumpudur,
Kancheepuram District - 602 105.

...Petitioner in all W.Ps

Vs.

1. Additional/Joint/Deputy/Assistant Commisioner of Income Tax Income-tax Officer, National Faceless Assessment Centre, Delhi.

2. Assistant Commissioner of Income-tax, Circle 1, LTU, 121, Nungambakkam High Road, Chennai - 600 034.

...1st and 2nd Respondent in all W.Ps

3. Principal Commissioner of Income Tax 4, 121, Nungambakkam High Road, Chennai - 600 034.

...3rd Respondent in W.P.10129 and 10135 of 2022

4. Joint Commissioner of Income Tax, LTU Range, Chennai, 121, Nungambakkam High Road, Chennai - 600 034.

...3rd Respondent in W.P.10140 of 2022

Common Prayer: Writ Petitions filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorari, to call for the records on the file of the respondents and quash

a.the impugned order No.1 in PAN:AAACB3079K dated 31.03.2022 in DIN Nos.ITBA/AST/S/147/2021-22/1042309739(1), ITBA/AST/S/147/2021-22/1042306745(1) and ITBA/AST/S/147/2021-22/

1042308324(1) respectively passed by the first respondent under Section 147 r/w Section 144B of the Income Tax Act for Assessment years 2013-14, 2014-15 & 2015-16.

b. the impugned order No.2 disposing off the objections raised by the petitioner to the reasons for reopening in PAN: AAACB3079K, DIN & Letter Nos: ITBA/AST/F/17/2021-22/1041276873 (1), ITBA/AST/F/17/2021-22/1041282140(1) and ITBA/AST/F/17/2021-22/1041276786(1)dated 22.03.2022 respectively passed by the first respondent for Assessment Years 2013-14, 2014-15 & 2015-16, and

c. the impugned notice issued by the second respondent in PAN: AAACB3079K dated 31.03.2021 in DIN & Notice Nos: ITBA/AST/S/148/2020-21/1032004532(1), ITBA/AST/S/148/2020-21/1032092209(1) and ITBA/AST/S/148/2020-21/1031951531(1) respectively issued under Section 148 of the Income Tax Act for the Assessment Years 2013-14, 2014-15 & 2015-16.

For Petitioner : Mr.P.S.Raman, Senior Counsel
[in all W.Ps.] for Mr.N.V.Balaji

For Respondents: Mr.D.Prabhu Mukunth Arunkumar
[in all W.Ps.] Junior Standing Counsel

COMMON ORDER

The issue raised in these writ petitions since is common, with the consent of learned counsel appearing for both sides, all these writ petitions were heard together and are disposed of by this common order.

2. That in respect of Assessment Years 2013-2014, 2014-2015 and 2015-2016, in order to reopen the assessment under Section 147 of the Income Tax Act,1961,(in short, "the Act"), notice under Section 148 of the Act was issued on 31.03.2021.

3.Pursuant to the said notice, returns were filed on 05.05.2021 by the petitioner/assessee and reasons of reopening were also asked for.

4.However only on 09.03.2022, the reasons for reopening were given by the Revenue and immediately on 21.03.2022 objections were raised for the said reasons questioning the jurisdictions of the Revenue.

5.Those objections given by the petitioner/assessee was rejected on the next day i.e., 22.03.2022.

6.Thereafter, on 30.03.2022 final show cause notice with draft assessment order was uploaded in the website by the Revenue at 12.01 hours. However on 31.03.2022 at 1.00 a.m. in the morning, they made a SMS alert to the petitioner/assessee stating that the final show cause notice has been uploaded, therefore directed the petitioner/assessee to respond immediately. The petitioner though wanted to respond, in the meanwhile, on 31.03.2022 at 16.01 hours, the impugned assessment orders have been passed. Challenging the said impugned orders, the present writ petitions have been filed with the aforesaid prayer.

7.Heard Mr.P.S.Raman, learned Senior Counsel appearing for the petitioner/assessee, who pointed out that, first of all, it is a case beyond four years period, therefore, insofar as the limitation beyond four years is concerned, if it fit in either of the reasons, which are provided in the proviso to Section 147 of the Act, then only, the limitation could be saved.

8.However, in the present case, based on the factual matrix, such a reasons could not available, therefore, the limitation period point has already been raised as a prime objection to the reasons for reopening given by the Revenue. Despite this specific objection was made on the limitation, without considering the same in a proper perspective, on the next date, rejection of objection had been made by the Revenue thereby the limitation issue has not been properly met by the Revenue.

9.Apart from this reason, learned Senior Counsel would also point out that, when objection was rejected on 22.03.2022, thereafter normally a notice must be given under Section 142(1) of the Act and also if at all notice under Section 142(1) of the Act was given already, a reasonable time must be given to the petitioner/assessee to respond.

10.Without giving such an opportunity, straightaway the final show cause notice with draft Assessment Order was uploaded on 30.03.2022 at 12.01 a.m hours, even that has been alerted through SMS communication to the petitioner/assessee only on the next date at 1.00 a.m.

11.Therefore, there was absolutely no time given to the petitioner even to respond to the final show cause notice as the very Assessment Orders itself was passed on 31.03.2022 at 16.09 hours. Therefore, this infirmity makes it very clear that, the principle of natural justice has been clearly violated. Hence, for these two reasons the impugned orders are liable to be interfered with, he contended.

12.Per contra, Mr.Prabhu Mukunth Arunkumar, learned Junior Standing Counsel appearing for the respondents/Revenue would contend that, first of all the petitioner/assessee had not at all filed its return as per the time stipulated under Section 139 of the Act.

13.When some reasons were found out for reopening the assessment under Section 147 of the Act, a notice was issued under Section 148 of the Act, then only the return was filed and the reasons were asked for. When the reasons were given, objections were raised since the objections were filed only on 21.03.2022, immediately the same was considered and rejected on 22.03.2022.

14.Merely because the objections were rejected on the next day, it does not mean that the Revenue has not applied its mind.

15.After rejecting the same, since the notice have already been given, which was also responded by way of raising objections, the final show cause notice was issued on 30.03.2022 and once final show cause notice is issued by the Revenue and uploaded the same in the web-portal, there is no need to alert the assessee by way of SMS, only to the benefit of the petitioner/assessee, such alert message has been made at 1.00 a.m on 31.03.2022, that does not mean that only 31.03.2022 at 1.00 a.m, the petitioner was put on notice about the final show cause notice.

16.Therefore, it cannot be stated that reasonable time to respond to the final show cause notice was not given to the petitioner/assessee. Hence on that ground the petitioner cannot assail the impugned order successfully, he contended.

17.Insofar as the plea raised by the learned Senior Counsel appearing for the petitioner with regard to the limitation is concerned, that has also been considered and rejected through the rejection order of objection, dated 22.03.2022. Therefore, once again the said question cannot be raised by challenging the Assessment Order. As against the Assessment Order, the petitioner has to go before the Appellate Authority under the provisions of the Act, he contended.

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

19.Insofar as the plea raised by the learned Senior Counsel appearing for the petitioner with regard to the limitation is concerned, even though the stand now taken by the Revenue that, at the time of rejection of objections dated 22.03.2022, that point also had been considered, this Court do not want to go into that controversy. Instead, this Court feels that the point of limitation since can be raised at any point of time it can once again be raised by the petitioner/assessee before the Appellate Authority and if it is raised that can also be considered as one of the prime objection with regard to the Assessment under Section 147 read with Section 144B of the Act.

20.That apart, insofar as the impugned orders, which were passed on 31.03.2022 is concerned, the final show cause notice admittedly was uploaded on 30.03.2022 at 12.01 a.m hours and the SMS alert was made at 1.00 a.m hours at 31.03.2022. On the same day at 16.09 hours i.e., 31.03.2022 the final orders of assessments, which are impugned herein, were passed. Therefore, there was absolutely no reasonable time was given to the petitioner/assessee to respond even to the final show cause notice.

21.Insofar as the plea raised by the learned Senior Counsel appearing for the petitioner that in between the rejection of objections and issuance of a final show cause notice, no notice either under Section 142(1) or 143(2) of the Act as the case may be, has been issued is concerned, this larger issue, which had been raised in some other cases, where also this Court prima facie found reasons and entertained those writ petitions, which are pending before this Court, cannot be gone into in these writ petitions.

22.In view of the afore-stated reasons, this Court feels that, the impugned orders are liable to be interfered with. Accordingly the following orders are passed:

i. That the impugned orders are set aside and the matters are remitted back to the respondent for reconsideration.

ii. While reconsidering the same, a reasonable time of two weeks shall be given to the petitioner/assessee to respond to the final show cause notice dated 30.03.2022, which need not be once again issued by the Revenue.

iii. It is open to the petitioner to raise the point of limitation also along with reply submitted to the final show cause notice dated 30.03.2022. If such a plea of limitation is raised in the reply to be submitted by the petitioner/assessee, the same shall be considered and decided and thereafter only the Revenue shall proceed to decide the reply given to the final show cause notice on merits and accordingly the final Assessment Orders can be passed thereafter.

23. With these observations and directions, all these writ petitions are disposed of. No costs. Connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

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To

1. Additional/Joint/Deputy/Assistant Commisioner
   of Income Tax Income-tax Officer,
   National Faceless Assessment Centre, Delhi.

2. Assistant Commissioner of Income-tax,
   Circle 1, LTU,
   121, Nungambakkam High Road,
   Chennai – 600 034.

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   LTU Range, Chennai
   121, Nungambakkam High Road,
   Chennai – 600 034.

+1cc to Mr.N.V.Balaji, Advocate, S.R.No.28585

+1cc to M/s.Hema Muralikrishnan, Advocate, S.R.No.27862

W.P.Nos.10129, 10135 & 10140 of 2022

PM(CO)
RGA(17/06/2022)