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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.04.2022

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THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

W.P.NOS.10138 & 10147 OF 2022
AND
W.M.P.NOS.9832, 9833, 9840 & 9841 OF 2022

International Seaport Dredging Private Limited,
(Formerly known as International Seaport Dredging Limited)
Represented by its Authorized Signatory,
Mr.Kannan Subramanian, P.No.2c, 1st floor,
Ocean Square, South Phase,
Thiru Vi Ka Industrial Estate, Ekkattuthangal,
Guindy, Chennai - 600 032. ...Petitioner in both W.Ps

Vs

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

2.Assistant Commissioner of Income Tax
Corporate Circle -2 (1), Wanaparthy Block,
No.121, Mahatma Gandhi Road,
Nungambakkam, Chennai,
Tamil Nadu, 600 034. ...Respondents 1 & 2 in both W.Ps

3.Principal Commissioner of Income Tax,
Chennai - 1, Room No.701,
VII Floor, Wanaparthy Block,
No.121, Mahatma Gandhi Road,
Nungambakkam, Chennai - Tamil Nadu, 600 034.
...3rd Respondent in W.P.No.10138/2022

3.Joint Commissioner of Income Tax,
Corporate Range -1,
Room No.701, VII Floor,
Wanaparthy Block,
No.121, Mahatma Gandhi Road,
Nungambakkam,
Chennai, Tamil Nadu, 600 034.
...3rd Respondent in W.P.No.10147/2022

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PRAYER in W.P.No.10138 of 2022 : Petition filed under Article 226 of the Constitution of India, praying for 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 passed by First Respondent in DIN No.ITBA/AST/S/147/2021-22/1041821867(1) dated 28/03/2022 in PAN AABCI2286E under section 147 read with section 144 B of the Income tax Act, 1961 for Assessment Year 2015-16

(b) the Impugned Notice No.1 issued under section 148 of the Act dated 31/03/2021 bearing DIN and Notice No. ITBA/AST/S/148/2020- 21/1032032357(1) in PAN AABCI2286E issued by the Second respondent for Assessment Year 2015-16

(c) the impugned Notice No.2 issued under Section 143(2) of the Income Tax Act act dated 29/07/2021 bearing DIN ITBA/AST/F/143(2)_4/ 2021-22/1034504911(1) in PAN AABCI2286E issued by the Second Respondent for Assessment Year 2015-16.

(d) the Impugned Order No.2 passed by the First Respondent dated 19/03/2022, bearing DIN & Letter No.ITBA/AST/F/17/2021-22/1041052399(1) in PAN AABCI2286E, disposing off the Petitioner's Objections against reopening for Assessment Year 2015-16.

PRAYER in W.P.No.10147 of 2022 : Petition filed under Article 226 of the Constitution of India, praying for 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 passed by First Respondent in DIN No.ITBA/AST/S/147/2021-22/1041823456(1) dated 28/03/2022 in PAN AABCI2286E under section 147 read with section 144 B of the Income tax Act, 1961 for Assessment Year 2016-17.

(b) the Impugned Notice No.1 issued under section 148 of the Act dated 31/03/2021 bearing DIN and Notice No.ITBA/AST/S/148/2020- 21/1031996913(1) in PAN AABCI2286E issued by the Second respondent for Assessment Year 2016-17.

(c) the impugned Notice No.2 issued under Section 143(2) of the Income Tax Act act dated 28/07/2021 bearing DIN ITBA/AST/F/143(2)_4/ 2021-22/1034467948(1) in PAN AABCI2286E issued by the Second Respondent for Assessment Year 2016-17.

(d) the Impugned Order No.2 passed by the First Respondent dated 19/03/2022, bearing DIN & Letter No.ITBA/AST/F/17/2021-22/1041052537(1) in PAN AABCI2286E, disposing off the Petitioner's Objections against reopening for Assessment Year 2016-17.

For Petitioner : Mr.N.V.Balaji
[in both W.Ps]

For Respondents : Mrs.Hema Muralikrishnan
Senior Standing Counsel
[in both W.Ps]

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COMMON ORDER

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

2. The petitioner is an assessee under the respondent. In order to reopen the assessment for the Assessment Years 2015-16 and 2016-17, notices were issued under Section 148 of the Income Tax Act, 1961 [in short, 'the Act'] on 31.03.2021.

3. After filing the return, the petitioner sought for reasons for such reopening on 30.04.2021. Pursuant to which, reasons were revealed by the Revenue on 29.09.2021. The assessee raised objections for the said reasons on 30.11.2021. The said objection made by them have been considered and rejected on 19.03.2022.

4. Thereafter, shortly, i.e., on 24.03.2022, final Show Cause Notices were issued along with draft assessment orders, giving time up to 27.03.2022 to the assessee to respond and the assessment orders were passed on the next day i.e., on 28.03.2022.

5. Assailing the assessment orders dated 28.03.2022, the present writ petitions have been filed.

6. Mr.N.V.Balaji, learned counsel for the petitioner, would submit that, even against the rejection of objections under Section 148 of the Act by order dated 19.03.2022 it was under challenge in Writ Petitions in W.P.Nos.7719 & 7722 of 2022 and when those writ petitions were pending since final Show Cause Notices were issued on 24.03.2022, in between i.e., on 25.03.2022, the petitioner had made a request to the Revenue, stating that, challenging the rejection of objections, already writ petitions were filed, which were not taken up at that time, therefore, awaiting the decision to be made, the time for giving reply can be deferred for sometime.

7. Unmindful of the same i.e., request given by the assessee, since the assessment orders have been passed by the Revenue on 28.03.2022, the petitioner raising that as one of the ground, have come forward to challenge those orders.

8. That apart, the learned counsel appearing for the petitioner also would contend that, the very rejection made against the objections by order dated 19.03.2022 itself cannot be sustained, as it has not been properly considered by the Revenue.

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9. Heard Mrs.Hema Muralikrishnan, learned Senior Standing Counsel appearing for the respondents, who would submit that, it is not the case, where the procedure contemplated in GKN Driveshafts (India) Ltd Vs. Income Tax Officer and others dated 25.11.2002 reported in [2003] 259 ITR 19 (SC) has not been followed. Reasons were revealed by the Revenue, for which, objections have been raised by the assessee and those objections having been considered, was rejected by the order of the Revenue dated 19.03.2022.

10. Though a challenge was made against the said orders dated 19.03.2022, the Revenue has not been prevented or precluded from issuing a final show cause notice as the limitation i.e., 31.03.2022 since was fast approaching the final show cause notice was issued on 24.03.2022, giving time up to 27.03.2022. Before that day, since no reply was given to the show cause notices, the Revenue proceeded to pass the final orders on 28.03.2022. Thereafter, on 30.03.2022, earlier two writ petitions were withdrawn by the petitioner, of course, with a liberty to challenge the assessment orders dated 28.03.2022 in the manner known to law. Therefore, if at all the petitioner is having any grievance over the impugned assessment orders, he can very well challenge the same by preferring an appeal before the Commissioner of Income Tax (Appeals) in the manner known to law and therefore, these writ petitions cannot be entertained by this Court, she contended.

11. I have considered the said submissions made by both the counsels appearing for the parties and have perused the materials placed before this Court.

12. Insofar as the ground raised by the petitioner that, while rejecting the objection of the petitioner by orders dated 19.03.2022, the objection raised by the petitioner has not been properly considered, is not appealing to this Court at this juncture because there has been consideration and rejection has been made and if that will have any repercussion in the present impugned orders i.e., assessment orders dated 28.03.2022, the same can very well be assailed collaterally, if the petitioner has chosen to go before the Appellate Authority, challenging the impugned assessment orders.

13. Therefore, the said objections raised by the petitioner or the ground urged by the petitioner with regard to the jurisdiction of the Revenue, to invoke Section 147 or Section 148 is concerned, that cannot be gone into at this juncture especially in these writ petitions.

14. However, after the rejection was made on 19.03.2022 of the objections of the assessee, a reasonable time should have

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been given to the assessee to respond to the show cause notices. It may be either the final show cause notice or by way of notice either under Section 142 (1) or Section 143 (2) of the Act as the case may be. However, in the present case, after the 19.03.2022 rejection order, straight away, final show cause notices were issued on 24.03.2022, giving only a very short time up to 27.03.2022 and in the meanwhile, the petitioner has already approached this Court by filing the aforesaid two writ petitions. The said reasons stated by the writ petitioner for deferring the date was not considered, as impugned orders of assessment was passed on 28.03.2022. Therefore, this Court feels that a fair opportunity was not given to the petitioner even after the show cause notices dated 24.03.2022. In view of the aforesaid facts, this Court also feels that the impugned orders dated 28.03.2022 are in violation of the principles of natural justice. On that ground itself, the impugned orders i.e., the assessment orders dated 28.03.2022 are liable to be set aside.

15. In that view of the matter, this Court is inclined to dispose of these writ petitions with the following orders:

(i) That the assessment orders dated 28.03.2022, which are impugned herein are hereby set aside and the matters are remitted back to the respondent / Revenue for reconsideration and in the process of reconsideration, it is open to the petitioner/assessee to treat the Show Cause Notices dated 24.03.2022 as fresh notices and accordingly, within a period of two weeks from the date of receipt of a copy of this order, it is open to the petitioner/assessee to give reply with further documents, inputs, if any, to the satisfaction of the Revenue and based on which, it is open to the Revenue to proceed further and to pass final orders.

(ii) It is further made clear that, except the quashment of the orders dated 28.03.2022 i.e., the impugned assessment orders, all other prayer sought for by the petitioner in these writ petitions are liable to rejected for the reason stated above, hence those prayers are rejected.

16. With these observations, both the writ petitions are disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Deputy Registrar(CS)

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Sub Assistant Registrar

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To

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+1cc to Mr.Hema Muralikrishnan, Senior Standing Counsel,
Sr.No.27864

+1cc to Mr.N.V.Balaji, Advocate Sr.No.28586

W.P.Nos.10138 & 10147 of 2022

SKM(CO)
RVM(10/06/2022)

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