IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 06.05.2022

CORAM:

THE HONOURABLE MRS. JUSTICE S.ANANTHI

W.P.No.12189 of 2022
and
W.M.P.Nos.11639, 11646 and 11648 of 2022

M/s.GI Retail Private Limited
(merged with M/s.GI Hospitalities Pvt. Ltd)
Rep. by its Authorised Signatory
Ramu Annamalai
C-9, Thiru Vi Ka Industrial Estate
Guindy, Chennai-600 032. ... Petitioner

Vs.

1. The Principal Commissioner
   of Income Tax-I,
   Income Tax Office
   Chennai.
2. The Deputy Commissioner of
   Income Tax,
   Income Tax Office
   Corporate Circle 1 (1)
   Chennai-34.
3. Assistant Commissioner of
   Income Tax
   Chennai. ... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India praying for a writ of Certiorarified Mandamus, calling for the records of the Notice vide No.1TBA/AST/S/148-1/2021-22/1042359521 (1) dated 31.03.2022 under Section 148 of the Income Tax Act, 1961 along with an Order vide DIN ITBA/AST/F/148A/2021-22/1042351346(1) dated 31.03.2022 passed by the 2nd respondent herein under Section 148A Clause (d) and quash the same and consequently direct the respondents not to proceed with the re-assessment and demanding interest and penalty from the petitioner.

For Petitioner : Ms.Narmadha Sampath

For Respondents: Ms.Hema Murali Krishnan

ORDER

By consent of both parties, this Writ Petition is taken up for final disposal at the admission stage itself.

2. The case of the petitioner in brief:

The petitioner company was incorporated under the Companies Act, 1956 and it is running the business of software development and software services for several years and have executed several projects for Governmental and private agencies successfully. The petitioner's company is also engaged in online booking of hotel, tour, travel booking and package tours and also providing accommodation for various corporates in India as well as in abroad. Moreover, M/s.GI Hospitalities Private Limited is a company, running the business of Hospitality services and it has been merged with M/s.GI Retail Privae Limited, i.e, the petitioner herein with effect from 01.04.2015 vide the order of this Court dated 07.11.2016 in C.P No.247 of 249 of 2016. Further, the petitioner's company took over all the charges and the liabilities concerned as per the order of this Court and running the business in the name and style of M/s.GI Retail Private Limited. Hence, the company M/s.GI Hospitalities Private Limited is no more in existence at present. The petitioner company had filed the original return of income tax for the assessment year 2018-2019 on 31.10.2018. However, the petitioner's company received a notice dated 22.09.2019 under Section 143(2) of the Income Tax Act, 1961, issued by the Respondent herein through ITBA. Subsequently, the petitioner herein was issued with the notice dated 14.12.2020 under Section 142(1) of Income Tax Act, disallowing the depreciation to the tune of Rs.64,343/-. Thereafter, the petitioner was issued with a show cause letter dated 09.03.2021 with regard to disallowing depreciation to the tune of Rs.64,343/- which he did not object to. Thereafter, an order and demand notice was issued to this effect. A notice No.ITBA/AST/F/148A (SCN) 2021-22/1040721879(1) dated 14.03.2022 under Section 148A(b) of the Income Tax Act, 1961, has been issued with the prior approval of Principal Commissioner of Income Tax to show cause as to why a Notice under Section 148 of Income Tax Act, should not be issued on the basis of information available as per the notice suggesting that income chargeable to tax has escaped assessment and required the petitioner herein to show cause by 21.03.2022. The petitioner has filed their reply on 14.03.2022 and 18.03.2022 to the aforesaid notice dated 14.03.2022, stating that the companies have been merged and the petitioner has already included the income of Rs.4,74,04,205/- which belongs to GI Hospitalities Pvt. Ltd in the books of GI Retail Pvt. Ltd while filing the return of income. It is pertinent to state that the company referred by the respondents herein is not in existence. To the shock and surprise, the respondent has stated that it did not receive any satisfactory response and hence, issued a notice dated 31.03.2022 under Section 148 of the Income Tax Act, along with an order dated 31.03.2022 passed by the 2nd respondent under Section 148A Clause (d) stating that the petitioner has to furnish the return for the Assessment Year 2018-2019 within 30 days from the date of service of notice. The order has been passed prior approval of PCIT-1, Chennai. Thus, aggrieved by the impugned notice and impugned order passed by the 2nd respondent, the present petition has been filed before this Court.

3. The learned counsel appearing for the petitioner would submit that though the petitioner company has produced valid documents for merging of the company and tax returns, the respondent had issued the notice without non application of mind. The issuance of notices in the name of the company which is not in existence is void ab initio. Hence, he prays to quash the impugned order passed by the respondent.

4.The learned counsel appearing for the respondent department would submit that except for the details on merger, the assessee has not submitted documents satisfactorily explaining the above transactions has escaped assessment in the case of the assessee for the assessment year 2018-2019 and therefore, it is a fit case to issue notice under Section 148 of Income Tax Act.

5. According to the petitioner, M/s. GI Hospitalities Private Limited has been merged with the petitioner company viz., M/s. GI Retail Pvt. Ltd., as per the order of this Court dated 07.11.2016. But, notices were sent under Section 148 of Income Tax Act, by the Income Tax Officer for the year 2018-2019. In the reply vide letters dated 18.03.2022 and 30.03.2022, the petitioner company itself admitted that they have received an income of Rs.4,74,04,205/- which has been accounted in the Books of Account of GI Retail Pvt. Ltd., and the same was reflected in the 26AS of PAN No.AADCG9089R of GI Hospitalities Private Limited. Therefore, it is the contention of the respondent department that even after the merger, the petitioner company has received the income accounted in the name of GI Hospitalities Private Limited. So, the petitioner has to give proper explanation before the authorities concerned after the receipt of notice under Section 148 of Income Tax Act. Challenging the impugned notices, the instant petition is filed.

6. Considering the facts and circumstances of the case and also in view of the aforesaid submission, this Court is inclined to direct the petitioner herein to give proper explanation before the authorities concerned to the notices received under

Section 148 of the Income Tax Act. The petitioner is also given liberty to raise objection, if any before the authorities concerned to the impugned notices.

7. With the above observation and direction, this Writ Petition stands disposed of No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Vacation Officer

//True Copy//

Sub Assistant Registrar

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To

1. The Principal Commissioner
of Income Tax-I,
Income Tax Office
Chennai.

2. The Deputy Commissioner of
Income Tax,
Income Tax Office
Corporate Circle 1 (1)
Chennai-34.

3. Assistant Commissioner of
Income Tax
Chennai.

+1cc to M/s.Hema Muralikrishnan, Advocate, S.R.No.31162

W.P.No.12189 of 2022
and
W.M.P Nos.11639, 11646 & 11648 of 2022

AJB(CO)
SB(16/05/2022)