IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.02.2022

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THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.No.19552 of 2021
&
W.M.P.Nos.20833 & 20836 of 2021

(Through Video Conferencing)

M/s.Arun Excello Foundations,
Represented by its Partner,
Mr.P.Suresh,
No.18, Bhattad Towers,
West Cott Road, Royapettah,
Chennai - 600 014. ...Petitioner

Vs.

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

Prayer: Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, to call for the records on the file of the respondent and quash the impugned order in ITBA/AST/S/143(3)/ 2021-22/1034851011(1) dated 13.08.2021 passed by the respondent as illegal and consequently direct the respondent to pass a fresh assessment order after granting the petitioner, sufficient opportunity of being heard through Video Conferencing in accordance with law.

For Petitioner : Mr.R.Sivaraman

For Respondent : Mrs.Hema Muralikrishnan
Senior Standing Counsel

ORDER

The petitioner has challenged the impugned Assessment order dated 13.08.2021 for the Assessment Year 2018-19. The petitioner was earlier issued with notice under Section 142(1) of the Income Tax Act on 10.12.2020 followed by another notice dated 23.01.2021 to which the petitioner complied and partly complied. After the above compliances, the petitioner was issued with a show cause notice dated 25.03.2021 wherein a proposal was made to addition of estimated profits inrespect of two projects of the petitioner namely ''Triveni'' and ''Olive Tides'' as detailed below:

Particulars	F.Y.2017-18 (Rs.)	F.Y.2016-17 (Rs.)
Work Contracts	5,86,96,748	1,06,90,570
Project ''Triveni''	18,77,68,946	14,39,00,167
Project ''Olive Tides''	44,62,94,158	44,62,94,158
Total	69,27,59,852	60,08,84,895

and under Section 68 of the Income Tax. the petitioner appears to have responded to the same and requested the respondent to permit the petitioner to appear through Video Conferencing.

2.Subsequently, the second show cause notice dated 19.06.2021 was issued to the petitioner herein the demand proposed inrespect of ''Triveni'' and the proposed addition under Section 68 was dropped. By the said notice, the petitioner was asked to respond by filing reply on or before 23.06.2021. The case was suo motto to 25.07.2021, the petitioner appears to have sent a representation and requested the respondent to permit the petitioner to participate in the personal hearing through Video Conferencing.

3.The learned counsel for the petitioner submits that though the petitioner requested the respondent to permit the petitioner to participate through Video Conferencing, the facility of Video Conferencing was not extended to the petitioner and thus the impugned order has been passed. It is therefore submitted that the impugned order has been passed in violation of principles of natural justice and is liable to be quashed.

4.Opposing the prayer, the learned Senior Standing counsel for the respondent on the other hand submits that the system itself allows an assessee to opt for Video Conferencing by pressing the link in the notice itself and since the petitioner did not opt by pressing the link given for a Video Conferencing, the impugned Assessment Order passed by the National Faceless Assessment Centre in New Delhi cannot be challenged.

5.The learned Senior Standing Counsel for the respondent further submits that the petitioner has an alternate remedy under Section 246A of the Income Tax Act and therefore on this account also the writ petition is liable to be dismissed as the petitioner has an alternate remedy.

6.Heard the learned counsel for the petitioner and the learned Senior Standing Counsel for the respondent and perused the impugned order and various notices issued under Section 142(1) of the Income Tax Act and show cause notice dated 25.03.2021 and 19.06.2021 and the reply of the petitioner. The petitioner has been by an large complied in responding to the notices and the show cause notice issued to the petitioner.

7.The impugned order has been passed without affording an opportunity of the petitioner to be heard through Video Conferencing. The petitioner's request has not been considered, despite a specific request of the petitioner. Though the Assessment is now through National Faceless Assessment Centre and system enabled and the distribution of work is through portal, nevertheless, the system has to operate in such a way to allow assessee to participate in the proceedings through Video Conferencing if they desire. It is not sufficient for the respondent to state that the petitioner has not pressed the link for Video Conferencing in the notice issued.

8.Considering the fact that the order has been passed without giving an opportunity for personal hearing through Video Conferencing to the petitioner, I am inclined to quash the impugned order and remit the case back to the respondent to pass a speaking order on merits and in accordance with law within a period of sixty days from the date of receipt of a copy of this order. The respondent is directed to issue appropriate instructions to the Administrator of the National Faceless Assessment Centre to enable the petitioner to participate in a personal hearing through Video Conferencing.

9.Accordingly, this writ petition stands allowed with the above observations. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS)

//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,
Delhi.
+1 cc to Mrs.Hema Muralikrishnan, Advocate Sr.NO. 6608

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CP(CO)
A.SK(21.02.2022)