IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.02.2022

CORAM

THE HON'BLE MR.JUSTICE C.SARAVANAN

W.P.NO.23746 OF 2021
AND
W.M.P.NOS.25002, 25003 & 25004 OF 2021

(THROUGH VIDEO CONFERENCING)

Dr.D.John Ponnudurai Educational Trust,
Represented by its Trust, Mr.Vinodh Dirvaviraj,
25A, St.John Matriculation Higher Secondary School,
New Colony, Alwarthirunagar,
Chennai-600 087.

... Petitioner

Vs.

1. The Assistant Commissioner of Income Tax,
National e-Assessment Centre, Delhi,
E-Ramp, Jawaharlal Nehru Stadium,
Delhi-110 003.

2. The Income Tax Officer,
Ward-3, Chennai
Income Tax Department,
121, Nungambakkam High Road,
Nungambakkam, Chennai-600 034.

3. The Commissioner of Income Tax,(Exemptions),
Income Tax Department,
121, Nungambakkam High Road,
Nungambakkam, Chennai-600 034.

... Respondents

Prayer: Writ Petition filed under Article 226 of Constitution of India, for issuance of a Writ of Certiorarified Mandamus calling for the records of the Writ Petitioner Company on the file of the First Respondent to quash the impugned order dated 25.09.2021 passed u/s 143(3)/254 r.w.s 144B of the Act for the Assessment Year 2009-2010 in ITBA/AST/S/143(3)2021-2022/1035896898(1) and consequently direct the First Respondent to complete the fresh assessment for the assessment year 2009-2010 after granting reasonable/ sufficient opportunity of hearing.

For Petitioner : Mr.A.S.Sriraman

For Respondents : Mrs.Hema Muralikrishnan
Senior Standing Counsel

ORDER

Heard the learned counsel for the petitioner and the learned Senior Standing Counsel for the respondents.

2. The petitioner has challenged the Impugned Assessment Order dated 25.09.2021 passed by the first respondent for the Assessment Year 2009-2010 pursuant to a demand order dated 07.08.2020 of the Income Tax Appellate Tribunal in ITA No.367/Chny/2020.

3. It is the specific case of the petitioner that the Impugned Order has been passed without giving adequate opportunity to the petitioner to upload the information called for as to whether the petitioner is entitled for exemption under the Income Tax Act, 1961.

4. The learned counsel for the petitioner submits that the Income Tax Web Portal was experiencing difficulties and therefore the petitioner was unable to upload the information to substantiate the exemption for which the case was remanded back by the Tribunal by its order dated 07.08.2020.

5. The learned counsel for the petitioner submits that even on 14.09.2021, the petitioner had sent a representation to DIT (Systems) registering the inability of the petitioner to register the DSC in the Income Tax Portal by attaching the screen shot of the query of the petitioner.

6. It is submitted that the petitioner received a Show Cause Notice together a Draft Assessment Order on 17.09.2021, which called upon the petitioner to reply and upload the required information by 20.09.2021.

7. It is submitted that the petitioner got only two days opportunity to upload the information and that by the reply dated 19.09.2021, the petitioner undertook to upload the information by 23.09.2021.

8. It is submitted that all through the period the Income Tax Web Portal was experiencing technical glitches as a result of which the petitioner was unable to upload the information.

9. It is therefore submitted that the Impugned Assessment Order passed on 25.09.2021 for the Assessment Year 2009-2010 is liable to be quashed and the case may be remitted back to the respondent to pass a fresh order after giving an opportunity to the petitioner to upload the information which the petitioner undertook to justify the claim of exemption.

10. Appearing on behalf of the respondent, the learned Senior Standing Counsel submits that the technical problem occurred only during the month of July and August 2021 and thereafter it was resolved and therefore it is submitted that the objection of the petitioner, as the petitioner was unable to upload the information cannot be countenanced.

11. It is further submitted that even in the affidavit filed in support of the present writ petition, the petitioner has not stated that the petitioner was unable to upload the information. The only grievance of the petitioner appears to be that the order has been passed in a hurry without giving adequate opportunity to the petitioner.

12. The learned Senior Standing Counsel for the respondents further drew attention to notice issued under Section 142(1) of the Income Tax Act, 1961 on 20.02.2021 and another reminder issued to the petitioner on 17.08.2021 asking the petitioner to furnish the required information. It is therefore submitted that the petitioner cannot state that there has been a Violation of Principles of Natural Justice.

13. It is further submitted that the dispute pertains to the Assessment Year 2009-2010 and therefore on this count also the writ petition is liable to be dismissed.

14. The learned Senior Standing Counsel for the respondents further submits that the petitioner has an alternate remedy which is more efficacious and therefore on this count also this writ petition is liable to be dismissed.

15. Heard the learned counsel for the petitioner and the learned Senior Standing Counsel for the respondents.

16. The dispute pertains to the Assessment Year 2009-2010. The Tribunal had remanded the case back by its order dated 07.08.2020. As per the aforesaid order, the petitioner was required to pass all contemporaneous, primary and secondary evidence in support of his claim before the Assessing Officer to pass Appropriate Orders after giving adequate opportunity to the

assessee. The appeal filed by the petitioner was treated as partly allowed for statistical purposes.

17. The order dated 07.08.2020 makes it clear that it is for the petitioner to file all the required documents. If such documents were filed by the petitioner in time, the respondent would have been required to consider the same and pass appropriate orders. Instead the petitioner has waited for the respondents to issue a Draft Assessment Order and the Show Cause Notice dated 17.09.2021. Though the Income Tax Web Portal was experiencing technical glitches and is stated to be the petitioner's inability to upload the information, there are no records to substantiate the same.

18. The impugned order has been passed after the information called for by the respondent vide notice dated 20.02.2021 and the reminder notice dated 17.08.2021 were not fully complied.

19. Though these notices were issued, nothing precluded the petitioner earlier from sending the information pursuant to the direction of the Tribunal dated 07.08.2021.

20. Considering the above, I do not find any merits in this Writ Petition. Therefore this writ petition is liable to be dismissed. Liberty is however given to the petitioner to file a Statutory Appeal before the Appellate Commissioner under Section 246 A of the Income Tax Act, 1961 within a period of thirty days (30) from the date of receipt of a copy of this order. If such appeal is filed by the petitioner, the Appellate Commissioner shall entertain and dispose the same in accordance with law and on merits within a period of three months from the date of receipt of a copy of this order.

21. The petitioner is also given liberty to file appropriate application before the respondent under Section 220(6) of the Income Tax Act, 1961 for staying the recovery of the proceedings. If indeed the petitioner had no opportunity to upload the information earlier immediately after the Tribunal passed its order dated 07.08.2020 in the system, the respondent shall consider the same while passing appropriate orders to be passed under the proposed application to be filed under Section 220(6) of the Income Tax Act, 1961 and considered the decision of the Hon'ble Supreme Court in L.G.Electronics Incorportion, South Korea Vs. Assistant Director of Income Tax and others,

(2018) 18 SCC 447. No costs. Consequently, connected Writ Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CS-VII)

//True Copy//

Sub Assistant Registrar

rgm

To

1. The Assistant Commissioner of Income Tax,
National e-Assessment Centre, Delhi,
E-Ramp, Jawaharlal Nehru Stadium,
Delhi-110 003.

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121, Nungambakkam High Road,
Nungambakkam.

+1cc to Mrs.Hema Muralikrishnan, Advocate, S.R.No.6607

W.P.No.23746 of 2021
and
W.M.P.Nos.25002, 25003 & 25004 of 2021

MT(CO)
RLP(09/03/2022)