IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.01.2022

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.NO.28120 OF 2021
AND
W.M.P.NOS.29709, 29713, 29715 & 29717 OF 2021

(THROUGH VIDEO CONFERENCING)

M/s.Hermes I Tickets P Ltd,
(Represented by its Director),
No.C-9, TVK Industrial Estate,
Guindy, Chennai - 600 032.
PAN:AABCH7295J. ... Petitioner

.Vs.

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

2. The Deputy Commissioner of Income Tax,
Corporate Circle - 2(1),
Income Tax Department,
121, Nungambakkam High Road,
Chennai - 600 034.

3. The Principal Commissioner of Income Tax,
Chennai - 1, Income Tax Department,
121, Nungambakkam High Road,
Chennai - 600 034. … Respondents

Prayer:-

Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, to call for the records of the writ petitioner Company/Assessee on the file of the first respondent to quash the impugned order dated 29.09.2021 passed u/s 144 read with Section 144B of the Income Tax Act, 1961 for the Assessment Year 2018-19 in DIN and Order No.ITBA/AST/S/144/2021-22/1036035169(1) and consequently direct the first respondent to complete the fresh assessment for the assessment year 2018-19 in directing to grant reasonable/sufficient opportunity of hearing.

For Petitioner : Mr.S.Sridhar

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. This case was already heard at length in the forenoon and thereafter passed over. The petitioner was asked instructions as to whether the petitioner was willing to deposit any amount as a condition for setting aside the impugned order and to remit the case back to the respondents to pass a fresh de novo order.

3. The learned Senior Standing Counsel for the respondents was also requested to get instructions. However, the learned Senior Standing Counsel was unable to get any instructions.

4. Considering the nature of the case and the amount confirmed in the impugned order and having regard to the facts of the case and arguments advanced by the learned counsel for the petitioner and the defence of the learned Senior Standing Counsel for the respondents, it is discernible that the petitioner is a IATA agent engaged in booking tickets for its clients and receives advance amounts from clients for being paid to various airline companies. The advance amount which was lying in the petitioner's account, has been added as ''an unexplained income'' in the hands of the petitioner and therefore proceedings were initiated to finalise the assessment.

5. The petitioner had two officers namely Mr.Selvaraj who are the Chief Financial Manager and one Ms.Swasthika, Finance Manager who were handling the accounts and Income Tax related issue. The Income Tax Department has sent regular intimation to the petitioner's company in the designated email and also to these persons who were resigned from the petitioner's company during sometime in 2019 and in September 2020.

6. Thus, the petitioner has not replied to various notices issued by the Respondent. Since the assessments were getting time barred, the respondent proceeded to pass impugned order dated 29.09.2021. The amount of tax payable in terms of the impugned is a whopping amount of Rs.8,66,51,80,904/-. The learned counsel for the petitioner submits that petitioner is neither liable to the aforesaid amount nor has wherewithal to pay the aforesaid amount.

7. The learned Senior Standing Counsel for the respondents submits that the petitioner has been negligent in not responding to any of the notices and the information sought for and that repeated notices remained unanswered. The learned Senior Standing Counsel for the respondents submits that there are several disputed question of facts which cannot be examined at length in summary proceedings under Article 226 of the constitution of India and therefore submits that the petitioner has an alternate remedy under Section 246A of the Income Tax Act and therefore petitioner should be asked to file such appeal. She therefore prays for dismissal of this writ petition.

8. The petitioner has made out a case for interference as the impugned order has been passed based on the assumption that the amount urging in the petitioner's account during the period were “an unexplained income” of the petitioner. The fact remains that the two officers had left the petitioner and thus the petitioner could not reply to notice. The fact that the petitioner will have to be wound up if the impugned order remains. Therefore, the impugned order is quashed, subject to the petitioner depositing a sum of Rs.5 Crores in two equal instalments within a period of two months from the date of receipt of a copy of this order. The first instalment shall be paid before the end of first month, i.e on or before 31.01.2022 and the second instalment by 14.02.2022. On payment of the aforesaid amount, the impugned order shall stands quashed.

9. As and when the petitioner deposits the aforesaid amount, the attachment order issued pursuant to the impugned assessment order dated 29.09.2021 shall also automatically stand vacated. The official respondents shall pass an order on merits within a period of ninety (90) days from the date of receipt of a copy of this order on such payment.

10. The impugned order which stands quashed by this order subject to compliance of the conditions stipulated herein, shall be treated as a Show Cause Notice in addition to the Show Cause Notice already issued to the petitioner.

11. The petitioner shall file appropriate reply within a period of thirty (30) days from the date of receipt of a copy of this order.

12. The official respondents shall issue appropriate instructions to the administrator of the web portal to allow the petitioner to upload the information / reply within the aforesaid period. The petitioner is directed to cooperate with the proceedings before the respondent in the re-assessment proceeding pursuant to the aforesaid order.

13. Accordingly, this writ petition stands disposed of with the above observations. No costs. Consequently, connected miscellaneous petitions are also closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

jas

To

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

2. The Deputy Commissioner of Income Tax,
   Corporate Circle – 2(1),
   Income Tax Department, 121,
   Nungambakkam High Road, Chennai – 600 034.

3. The Principal Commissioner of Income Tax,
   Chennai – 1, Income Tax Department,
   121, Nungambakkam High Road, Chennai – 600 034.

+1cc to Mr.S.Sridhar, Advocate, S.R.No.2097
+1cc to Mrs.Hema Muralikrishnan, Advocate, S.R.No.2095

W.P.No.28120 of 2021
and
W.M.P.Nos.29709, 29713,
29715 & 29717 of 2021

NK(CO)
PM/19/01/2022