IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 02.12.2022

CORAM

THE HONOURABLE **DR. JUSTICE ANITA SUMANTH**

W.P.No.32578 of 2022
and WMP Nos.31981 & 31985 of 2022

Mariaarokyam Xavier ... Petitioner

Vs

1.The Assistant Commissioner of Income Tax,
Non Corporate Circle 22(1), Tambaram,
Ramakrishana Street, Chennai 600 045.

2.The Principal Commissioner of Income Tax,
No.121, Nungambakkam High Road,
Chennai 600 034. ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, to call for the records of the Writ Petitioner Company on the file of the First Respondent to quash the impugned order dated 18.11.2022 passed u/s. 271D of the Act for the Assessment Year 2017-18 in DIN: ITBA/PNL/F/271D/2022-23/1047514010(1).

For Petitioner : Mr.A.S.Sriraman
For Respondents : Mrs.Hema Muralikrishnan
Senior Standing Counsel

O R D E R

Mrs.Hema Muralikrishnan, learned Senior Standing Counsel accepts notice for the respondents and is armed with instructions to enable final disposal of this matter, even at the stage of admission.

2. The challenge is to an order dated 18.11.2022 levying penalty under Section 271 D of the Income Tax Act, 1961 (in short 'Act') on the ground of violation of principles of natural justice.

3. Prior to passing of impugned order dated 18.11.2022, a show cause notice has been issued on 18.10.2022 granting the petitioner time to file response along with supporting material by 11.00 a.m. on 02.11.2022. The petitioner made a request on 29.10.2022 on the portal seeking adjournment till 15.11.2022 on the ground that he was gathering material in support of his stand. This request is placed at page 56 of the compilation accompanying the Writ Petition.

4. Learned Senior Standing Counsel, who appears for the respondents would accede to the position that it is part of the records. Despite the request for adjournment having been filed, the impugned order has come to be passed without reference to the request in any way. It was incumbent upon the officer to have considered or rejected the request for adjournment, and such order ought to have been communicated to the petitioner.

5. In light of the aforesaid procedure not having been followed, the impugned order is set aside on this score. The petitioner is permitted to file his reply within a period of two (2) weeks from date of receipt of a copy of this order, for which the portal will be enabled. Thereafter, if the petitioner requests

for personal hearing, he shall be heard, for which the portal shall be facilitated and an order of assessment passed de novo by the officer, in accordance with law. The entirety of exercise shall be completed within a period of twelve (12) weeks from date of receipt of a copy of this order.

6. This Writ Petition is allowed in the above terms. No costs. Connected Miscellaneous Petitions are closed.

02.12.2022

Index : Yes / No
Speaking/non-speaking Order
sl
Note: Issue order copy on or before 09.12.2022.
To

1.The Assistant Commissioner of Income Tax,
Non Corporate Circle 22(1), Tambaram,
Ramakrishana Street, Chennai 600 045.

2.The Principal Commissioner of Income Tax,
No.121, Nungambakkam High Road,
Chennai 600 034.

Dr.ANITA SUMANTH,J.

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