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W.P.No.354 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.10.2023

Coram

The Honourable **Mr.Justice Krishnan Ramasamy**

W.P.No.354 of 2022

and

W.M.P.No.395 of 2022

M/s. Gemini Film Circuit,
rep. by its Partner,
Mrs.A.Saisiva Jothi.

...Petitioner

Vs.

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

...Respondent

Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari to call for records of the respondent in assessment order, dated 20.09.2021, passed under Section 147 read with Section 144 B of the Income Tax Act, vide ITBA/AST/S/147/2021-22/1035738701(1) and all proceedings in furtherance thereof, for PAN : AAFFG4152N for assessment year (AY) 2017-18, dated 11.09.2021 and to quash the same as arbitrary.



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For Petitioner : Mr.Suhrith Parthasarathy
For Respondent : Mr.R.S.Balaji,
Senior Standing Counsel
assisted by Ms.S.Premalatha
Junior Standing Counsel

ORDER

The challenge in this Writ Petition is to the order of assessment passed by the respondent/Assessing Officer, dated 20.09.2021.

2. The petitioner is an assessee on the file of the respondent under the provisions of Income Tax Act, 1961. The case of the petitioner is that, the respondent/Assessing Officer issued a show cause notice dated 11.09.2021, calling upon the petitioner to file their reply/objections within 16.09.2021. Since the petitioner has failed to file reply within the time stipulated, the respondent/Assessing Officer confirmed the proposals contained in the show cause notice by virtue of the order impugned herein.

3. Mr.Suhrith Parthasarathy, learned counsel appearing for the petitioner would submit that the show cause notice, that was issued to the



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petitioner was through online Portal and the assessment made was also faceless assessment and the same was uploaded through online Portal. The learned counsel would submit that it is the grievance of the petitioner that the show cause notice was issued on 11.09.2021, which falls on Saturday and excluding the Sunday, since it is a holiday, the petitioner was granted only three working days' time to file their reply/objections to the show cause notice, which is not at all sufficient. Further, the learned counsel would submit that in the show cause notice, nothing was mentioned with regard to the provision of opportunity of personal hearing on or before 16.09.2021.

3.1 The learned counsel appearing for the petitioner would further submit that even assuming for arguments sake that the petitioner failed to file reply, that by itself would not deprive the petitioner's right of being afforded with opportunity of personal hearing. Therefore, the learned counsel contended that the impugned order of assessment is in total violation of principles of natural justice, and without conforming to the procedure contemplated under Section 144 B of the Income Tax Act.



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4. Mr.R.S.Balaji, learned Senior Standing Counsel assisted by Ms.S.Premalatha learned Junior Standing Counsel for the respondent would contend that only with a bona fide intention to provide fair opportunity to the petitioner, the show cause notice was issued calling forth the petitioner's reply/objections, however, since the petitioner failed to avail the said opportunity, by not filing the reply, the respondent, having left with no other option, proceeded to confirm the proposals contained in the show cause notice and passed the assessment order and the same is sustainable in law. Therefore, the learned counsel would contend that the petitioner having failed to utilize the opportunity afforded to them by not filing reply to the show cause notice, the petitioner cannot make a plea before this Court that no opportunity was afforded to them and therefore, prayed for dismissal of the Writ Petition. However, as regards the contention of the petitioner that they have not provided opportunity of personal hearing, the respondent has no say.

5. I have given due considerations to the submissions made by Mr.Suhrith Parthasarathy, learned counsel appearing for the petitioner and



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Mr.R.S.Balaji, learned Senior Standing Counsel assisted by
Ms.S.Premalatha, learned Junior Standing Counsel for the respondent and
perused the materials available on record.

6. The respondent/Assessing Officer issued a show cause notice calling for the petitioner's reply and the same was served on the petitioner only through online portal on 11.09.2021, which falls on Saturday and time stipulated for filing reply was 16.09.2021, i.e. only five days, within which time, no assessee could file an effective reply/objections. Therefore, the contention of the petitioner that only a short period of time, i.e. 5 days was granted to the petitioner to file their reply/objections, which is not sufficient for the petitioner to file detailed reply merits consideration.

6.1 The next contention of the learned counsel for the petitioner is that, in the show cause notice, admittedly, there is no mentioning about the opportunity of personal hearing. The provisions of Section 144 B of the Income Tax Act clearly states that no directions,,which are prejudicial to the assessee shall be issued before an opportunity is given to the assessee to be



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heard. In the present case, in the show cause notice, dated 11.09.2021, admittedly, there is no whisper with regard to provision of personal hearing to the petitioner.

6.2 Therefore, as rightly pointed out by the learned counsel appearing for the petitioner, even assuming without admitting that the petitioner has failed to file reply/objections to the show cause notice, the same would not per se deprive away of the rights of the petitioner for being provided with opportunity of personal hearing.

6.3 It would not be out of place to mention here that the real intention of Section 144 B, etc of the Income Tax Act is to provide an opportunity of being heard to the assessee before passing any orders, which are prejudicial to their rights/ interests. It is, with such motive, law has been enacted to safeguard the interest of the assessee, but, it is very unpleasant to see that in umpteen number of Writ Petitions, the assessment orders were assailed on the very ground of violation of principles of natural justice, audi alteram partem. If the real thoughts and intention of the Assessing Officer



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attached to the Income Tax Department is to provide fair opportunity of hearing to the assessee to put forth their defence, the same should be extended to the assessee in a real nature and it should not be a nominal one. This Court would like to point out that under the guise of providing opportunity, the assessee should not be called for to file reply within a short span of time. If done so, the object behind, which the provisions of the Act was enacted, will not be achieved and the same would lead to depriving away the legal rights of the assesseees.

6.4 Reverting to the present case, as already stated supra the respondent-Assessing Officer proceeded to issue show cause notice, which was dated 11.09.2021 and the same falls on Saturday, and by means of the said show cause notice, the petitioner was granted only a short span of time, i.e. 5 days, and excluding the Sunday, which is a holiday, only three working days was given for filing their reply/objections. At any costs, it does not merit on the aspect of providing due opportunity. The petitioner should have been provided atleast 21 days initially for filing their reply, unless and until, sufficient time is granted to the petitioner, they will not be in position



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to file their effective reply. Though in the present case, the petitioner has an alternative remedy to approach the Appellate Authority by way of an Appeal, still the Appellate Authority is not conferred with such power to remand the matter before the Assessing Officer.

6.5 Further, even under the Scheme of the Income Tax Act, the petitioner is entitled to have two occasions of the matter to be adjudicated by two Authorities and thereby, to avail two well considered opinion, in the present case, due to the failure on the part of the respondent/Assessing Officer to provide real opportunity, which the Act intends to provide, the petitioner had been deprived of their rights of defending themselves before the Assessing Authority.

6.6 Though the Appellate Authority will have the power of the Assessing Officer to make assessment by providing opportunity of personal hearing, the order to be passed by the Appellate Authority cannot be equated with the order that would be passed by the Assessing Officer, who would pass orders after considering the elaborate evidence, which are available



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before him. That apart, the assessee is also loosing one well considered opinion of the Assessing Officer, which the assessee is entitled to legally under the provisions of law.

6.7 Therefore, the aspects, which are to be borne in mind by the Assessing Officer before passing any assessment order is that the Assessing Officer, while issuing show cause notice shall provide sufficient time for the assessee to file their reply/objection, minimum of 21 days, unless and otherwise any specific time limit is fixed under the provisions of the Act; thereafter, shall afford an opportunity of personal hearing; in case, if the assessee is in need of any documents, which forms the basis for issuance of show cause notice, the same shall also be furnished to the assessee, as the case may be, wherever, it is required; and after conducting a full-fledged enquiry, shall conclude the assessment proceedings, in which, the Assessing Officer has to deal with the queries/points, (which the assessee would raise/putforth in the form of reply/objections) in detail along with reasons for rejection of the reply, if any and thereafter, shall pass final assessment order in accordance with law.



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6.8 Unless and otherwise, the above aspects are not scrupulously followed, the same would pave a way for the assessee to go on Appeal before the Appellate Authority and even in the Appeal, if the assessee is unable to succeed, ultimately, it will come to the scrutiny of this Court and Hon'ble Supreme Court, in which case, if the assessment order is set aside, the Department will loose it's revenue. Therefore, it is bounden duty of the Assessing Officer to pass a detailed order, providing reasons for rejection of the contention of the assessee. If any cryptic order is passed without touching upon the queries/contentions of the assessee, ultimately, it would be fatal to the assessee and also cause huge revenue loss to the revenue. Therefore, the orders to be passed by the Assessing Officer should always be a speaking order, safeguarding both the interest of the assessee and the Revenue.

6.9. On the aforesaid reasons, this Court is inclined to set aside the impugned order of assessment.



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7. Accordingly, the Writ Petition is allowed, the impugned order is set aside and the matter is remanded to the respondent for fresh consideration. The respondent is directed to fix a date for personal hearing of the petitioner, peruse the documents that may be produced by the petitioner by way of filing reply/objections and after conducting a full-fledged hearing, the respondent is directed to pass fresh orders on the assessment. No costs. Consequently, connected Writ Miscellaneous Petition is closed.

17.10.2023

sd

Index : yes/no

Neutral Citation : yes/no

To

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



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Krishnan Ramasamy,J.,
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