IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.07.2023

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THE HONOURABLE **MR.JUSTICE C.SARAVANAN**

W.P.No.479 of 2022
and
W.M.P.Nos.528, 529, 530 & 531 of 2022

Vinplex India Private Limited,
Represented by its Authorized Signatory,
Mr.Nitesh Sanjeeva Poojari,
Unit No.7 & 8, First Floor,
Pinnacle Building International Tech Park,
CSIR Road,
Taramani Chennai – 600 113 ... Petitioner

Vs

1. Additional/Joint/Deputy/
Assistant Commissioner of Income Tax,
National Faceless Assessment Center,
Delhi.

2. Deputy Commissioner of Income Tax
Corporate Circle 3(1),
3rd Floor, Investigation Building,
New No.46, Mahatma Gandhi Road,
Nungambakkam,
Chennai – 600 034.

3. Joint Commissioner of Income Tax,

Corporate Circle 3(1),
3rd Floor, Investigation Building,
New No.46, Mahatma Gandhi Road,
Nungambakkam,
Chennai – 600 034.

4. HDFC Bank,
Represented by its Branch Manager,
Municipal No.8/24, Richmond Road,
Corporate Division No.61,
Bangalore – 560 025,
Karnataka,
India. ... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus, to call for the records on the file of the Respondent and quash the impugned order u/s.147 r.w.s. 144 of the Income Tax Act, 1961 dated 08.09.2021 in ITBA/AST/S/147/2021-2022/1035395153 (1) for the Assessment Year 2018-2019 passed by the respondent as arbitrary, illegal and against the principles of natural justice and direct the 1st respondent to grant sufficient time to the petitioner to reply to the Notice(s) and pass a fresh re-assessment order in accordance with law.

For Petitioner : M/s.Aparna Nandakumar
for Madhusruthi Neelakantan

For Respondents : Mr.R.S.Balaji
Senior Standing Counsel
Assisted by Mrs.S.Premalatha
Junior Standing Counsel

ORDER

The petitioner has challenged the Impugned Assessment Order dated 08.09.2021 for the Assessment Year 2018-2019.

2. By the Impugned Assessment Order dated 08.09.2021, the first respondent has added a sum of Rs.60 Crores as an unexplained investment under Section 69 of the Income Tax Act, 1961. The Impugned Assessment Order also records that despite several notices including Show Cause Notice issued to the petitioner, the petitioner has not replied to the same. Therefore, in view of Section 115BBE(2), the expenditure claimed in the return was to be disallowed as unexplained income in Section 69 read with Section 115BBE(b).

3. The petitioner had earlier entered into a Share Purchase Agreement with M/s.Periyapalayam Logistics Park Private Limited. Thereafter, the said M/s.Periyapalayam Logistics Park Private Limited merged with the petitioner, pursuant to a Scheme of Amalgamation sanctioned under Section 233 of the Companies Act, 2013.

4. Pursuant to a Scheme of Amalgamation, the petitioner company

whose registered office was in Gleneden Place, 813, Poonamallee High Road, Kilpauk, Chennai – 600 010 was shifted to its current address at Unit No.7 & 8, First Floor, Pinnacle Building, International Tech Park,CSIR Road, Taramani, Chennai – 600 113.

5. For the Assessment Year 2018-2019, the petitioner had filed a regular return under Section 139 of the Income Tax Act on 31.10.2018. Thereafter, the petitioner filed a revised return on 31.03.2019. Thereafter, a fresh return on 05.06.2020.

6. While filing the revised return also the petitioner had given the old address and the old e-mail id, although the address of the petitioner and his e-mail id had been changed.

7. The petitioner appears to have however intimated the change in the address to the Income Tax Department. Several communications were sent to the petitioner to its new e-mail id and the new address of its registered office at Unit No.7 & 8, First Floor, Pinnacle Building, International Tech Park, CSIR Road, Taramani, Chennai – 600 113.

8. Since the revised return dated 05.06.2020 had the old address viz., Gleneden Place, 813, Poonamallee High Road, Kilpauk, Chennai – 600 010 and the old e-mail id viz., vinplex1991@gmail.com, all further notices regarding assessment came to be issued to the petitioner through email and through postal service at the old address in Gleneden Place, 813, Poonamallee High Road, Kilpauk, Chennai – 600 010. Thus, the Impugned Assessment Order dated 08.09.2021 came to be passed, whereby the additions have been made.

9. It is a specific case of the petitioner that the petitioner came to know that the Impugned Assessment Order dated 08.09.2021 only after the refund claim of the petitioner for the subsequent Assessment Year 2019-2020 came to be issued on 22.12.2021, whereby, an amount of Rs.65,98,57,410/- was stated to be the outstanding due of the petitioner for the assessment year 2018-2019. It is thereafter, the petitioner has retrieved the Impugned Assessment Order and has filed this writ petition.

10. The learned counsel for the petitioner submits that there are certain mistakes on the part of the petitioner, however these mistakes are not fatal as the Department was aware of the fact that the petitioner had already altered its email-id from vinplex1991@gmail.com, to accounts@ascendasfirstspace.com and nitesh.poojari@ascendas-firstspace.com.

11. The learned counsel for the petitioner has placed reliance on Section 282 of the Income Tax, 1961 and the rules made there under. Specifically, a reference was made to Rule 127(2)(a)(iii) and (iv) and Rule 127(2)(b)(iii).

12. It is submitted that although the petitioner had committed mistake while filing the revised return on 05.06.2020, it was incumbent on the part of the respondent to have delivered or transmitted electronically all notices to the email address of the company as was available in the website of the Ministry of Corporate Affairs.

13. The learned counsel for the petitioner further submits that the

petitioner had already pre-deposited a sum of Rs.3 Lakhs as against the tax liability of Rs.65,98,57,410/- which has been demanded on account of the challenge to the unexplained income under Section 69 of the Income Tax Act, 1961.

14. That apart, it is submitted that the respondents are also holding lien over the above deposit of the petitioner for a sum of Rs.7 Lakhs. Hence, prays for setting aside of the Impugned Assessment Order dated 08.09.2021 by way of remand.

15. The learned counsel for the petitioner has also made a request for lifting of the lien.

16. The learned Senior Standing Counsel assisted by Junior Standing Counsel for the respondents on the other hand would submit that the petitioner has deliberately mislead the Department by giving incorrect address which has resulted in the Impugned Assessment Order that came to be passed.

17. It is submitted that the notices that were sent by the office of the second respondent are prior to the Impugned Assessment Order at the address and the email-id given in the return that was filed on 05.06.2020. Therefore, there is no case made out for quashing the Impugned Assessment Order dated 08.09.2021. Hence, prays for dismissal of the writ petition.

18. It is submitted that the first respondent herein is the National Faceless Assessment Center and it has nothing to do with the Assistant Director of Income Tax, CPC subject to the extent that both the wings are part of the Income Tax Department.

19. Therefore, it is submitted that the contention of the petitioner that the first respondent National Faceless Assessment Centre, New Delhi, was at fault while passing the Impugned Assessment Order cannot be countenanced.

20. It is further submitted that the petitioner neither informed the Assessing Officer nor the National E-Assessment Centre about the change of address. Therefore, the petitioner cannot be aggrieved that the respondent for not serving notices or the orders at the address or the e-mail id mentioned in the return.

21. The learned Senior Standing Counsel assisted by Junior Standing Counsel for the respondents further submits that the petitioner is a company organized under the provisions of the Companies Act, 2013 and therefore ignorance of such mistakes while filing the email address cannot be done. Hence, prays for dismissal of the writ petition.

22. I have considered the arguments advanced by the learned counsel for the petitioner and the learned Senior Standing Counsel assisted by Junior Standing Counsel for the respondents.

23. There is no doubt, that there was a mistake committed by the

petitioner while filing the revised return on 05.06.2020. Instead of giving new address and the new e-mail id, the petitioner has given the old postal address and the old e-mail id. Thus, all the communications pursuant to the aforesaid return that was filed on 05.06.2020 were addressed to the old e-mail id viz., vinplex1991@gmail.com and old address viz., Gleneden Place, 813, Poonamallee High Road, Kilpauk, Chennai – 600 010.

24. However, the fact also remains that other wings of the Income Tax Department was aware of the shifting of the address of the petitioner from old address viz., Gleneden Place, 813, Poonamallee High Road, Kilpauk, Chennai – 600 010 to new address viz., Unit No.7 & 8, First Floor, Pinnacle Building, International Tech Park, CSIR Road, Taramani, Chennai – 600 113. Similarly, the respondents were also aware of the change in email id.

25. The respondents were also aware of the change in e-mail id and address while passing order of refund claim for the subsequent financial year i.e., 2019-2020, the notices/orders were sent to the correct address at Unit No.7 & 8, First Floor, Pinnacle Building, International Tech Park,

CSIR Road, Taramani, Chennai – 600 113

26. The Provisions of Income Tax Rules, 1962 under 127 also states that the in case of a company organized under the Companies Act, 2013, notice have to be sent to the address as available in the website of the Ministry of Corporate Affairs.

27. Rule 127(2)(a)(iii) and (iv) and Rule 127(2)(b)(iii) of the Income Tax Rules, 1962 reads as follows:-

Rule 127	**Service of notice, summons, requisition, order and other communication**
127(2)(a)(iii)	The address available in the last income-tax return furnished by the addressee; or
127(2)(a)(iv)	In the cas of addressee being a company, address of registered office as available on the website of Ministry of Corporate Affairs.
127(2)(b)(iii)	In the case of addressee being a company, email address of the company as available on the website of Ministry of Corporate Affairs; or

28. Mistakes on the part of the petitioner and the respondents are on

account of adaptation of the mode of communication electronically in view of Section 282 as amended as inserted by Finance No.2 Act, 2009 with effect from 01.2009.

29. The petitioner has not committed a serious mistake although it has turned out to be fatal to the petitioner. Considering the interest of the parties, court is inclined to quash the Impugned Assessment Order and remit the case back to the respondents to pass a speaking order within a period of forty five (45) days from the date of receipt of a copy of this order.

30. The Impugned Assessment Order dated 08.09.2021 which stands quashed shall be treated as a corrigendum to the Show Cause Notice for the purpose of final dismissal.

31. The petitioner is at liberty to file a reply to the notice which preceded the Impugned Assessment Order dated 08.09.2021 within a period of fifteen days (15) from the date of receipt of a copy of this order. The petitioner is also at liberty to approach the respondents to lift the lien.

32. The writ petition stands allowed with the above observations and directions. No cost. Consequently, connected miscellaneous petitions are closed.

14.07.2023

Neutral Citation: Yes/No
Index : Yes/No
Speaking/Non-Speaking Order
rgm

To

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National Faceless Assessment Center,
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C.SARAVANAN, J.

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C.SARAVANAN,J.

Today, this writ petition is listed under the caption “for being mentioned” at the instance of learned counsel for the petitioner.

2. The learned counsel for the petitioner submits that there are minor typographical errors in the order passed by this Court on 14.07.2023 in this writ petition and that may be corrected.

3. Accepting the submission of the learned counsel for the petitioner, there shall be the following corrections are made in the following paragraphs of the order dated 14.07.2023 : -

i) In para–10, in fifth line, e-mail id 'accounts@ascendasfirstspace.com” shall stand substituted with **“'accounts@ascendas-firstspace.com” .**

(ii) In para-13, in second line, the words “ Rs.3 Lakhs” shall stand substituted with **“ Rs.3 Crores”**.

C.SARAVANAN,J.
kkd

(iii) In para-14, in second line, the words " Rs.7 Lakhs" shall stand substituted with **" Rs.7 Crores"**.

Registry is directed to carry out the aforesaid corrections and issue fresh copy of the order to the parties.

15.09.2023

kkd

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