IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.11.2023

CORAM

THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

W.P.No.4663 of 2023
and
W.M.P.No.4663 of 2023

SJB Automobiles Private Limited,
752, Avinasi Road,
Coimbatore – 641018. ... Petitioner

Vs.

1.The Principal Commissioner of Income Tax,
67-A Race Course Road,
Coimbatore.

2.Assistant Commissioner of Income Tax,
Corporate Circle 1 CBE
67-A Race Course Road,
Coimbatore.

3.The Commissioner of Income Tax (Appeals)
67-A Race Course Road,
Coimbatore. ... Respondents

Prayer: -

Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari to for the records of the 3rd respondent on its file in ITBA/NFAC/S/250/2022-23/1047682810(1) and to quash the impugned order date 28.11.2022.

For Petitioner	:	Mr.J.Balachander
For Respondents	:	Mrs.S.Premalatha Junior Standing Counsel For Mr.R.S.Balaji Standing Counsel

O R D E R

The challenge in the writ petition is to the order passed by the 3rd respondent dated 28.11.2022.

2. The case of the petitioner is that initially, an assessment order was passed by the Assessing Officer on 12.12.2019. Aggrieved against the said order, the petitioner preferred an appeal before the 3rd respondent. However, the third respondent vide the impugned order dated 28.11.2022 dismissed the Appeal upholding the order of the 2nd respondent. Hence, the present writ petition has been filed.

3. Mr.J.Balachander, learned counsel for the petitioner would submit that grievance of the petitioner is that when the petitioner filed Appeal aggrieved over the assessment order passed by the second respondent/Assessing Officer, the 3rd respondent supposed to afford an opportunity of hearing to the petitioner and even in the worst situations, the petitioner failed to appear before the Authority, the Authority ought to have dismissed the Appeal for non-prosecution at any cost, rather than dismissing the Appeal without hearing the petitioner.

3.1 The learned counsel for the petitioner would further submit that the 3rd respondent passed a detailed order in the absence of both the parties, i.e appearance from the appellant side as well as the respondent-Department side has been shown as "Non-appearance", which indicates that no one appeared on either side. Therefore, in the absence of either side of the parties, the impugned order came to be passed by the 3rd respondent. Hence, the learned counsel prayed for setting aside the impugned order.

4. Mrs.S.Premalatha, learned Junior Standing Counsel for Mr.R.S.Balaji Standing Counsel for the respondents though vehemently raised objection to the submissions made on behalf of the petitioner with regard to the non-provision of opportunity of hearing to the petitioner, however, she fairly admitted that the impugned order came to be passed by the Appellate Authority in the absence of both the petitioner as well as the respondents. Therefore, learned Junior Standing Counsel submitted that if any order is passed in the event of non-appearance of both the parties, it has to be set aside and the matter may be remanded back for adjudication before the Appellate Authority for hearing both the parties.

5. Heard the learned counsel for the petitioner and the learned Standing Counsel for the respondents and perused the materials available on record.

6. On perusal of the impugned order, it is seen that the same has been passed by the 3rd respondent / Appellate Authority in the absence of both the parties, viz., the petitioner herein and the respondent- Department.

7. It is a settled law that, in the event no one had appeared before any Court of Law, the Court concerned may dismiss the case for non-prosecution. In the present case, the third respondent, being the Appellate Authority, is supposed to decide the matter on merits based on the submission made by the both the parties, or, in the event of non appearance of either parties, the third respondent/Appellate Authority ought to have shown final indulgence, calling upon the parties to appear and thereafter, based on the merits of their contention, the 3rd respondent is expected to pass orders, whereas, the third respondent has passed the impugned order without even considering all these aspects. Therefore, this Court is of the view that the impugned order passed by the 3rd respondent is contrary to law and also in violation of the principles of natural justice and liable to be set aside.

8. Accordingly, the Writ Petition is allowed, the impugned order is set aside and the matter is remitted back to the third respondent for fresh adjudication, in which case, the third respondent is directed to decide the matter after affording an opportunity of personal hearing to the petitioner and in case of any inconvenience expressed by the petitioner for appearing in person, they shall be permitted to appear through video conference on any particular date as fixed by the third respondent and after hearing the petitioner in full, shall pass orders on merits and in accordance with law within a period of three (3) months from the date of receipt of a copy of this order.

9. In the result, this Writ Petition stands allowed. No costs. Consequently, connected Miscellaneous Petition is closed.

02.11.2023
(1/2)

Jeni

Index : Yes / No
Speaking order / Non-speaking order
Neutral Citation : Yes / No

To

1.The Principal Commissioner of Income Tax,
67-A Race Course Road,
Coimbatore.

2.The Assistant Commissioner of Income Tax,
Corporate Circle 1 CBE
67-A Race Course Road,
Coimbatore.

3.The Commissioner of Income Tax (Appeals)
67-A Race Course Road,
Coimbatore.

KRISHNAN RAMASAMY, J.

Jeni

W.P.No.4663 of 2023

02.11.2023
(1/2)