IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.07.2023

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

W.P.No.5247 of 2022
and
W.M.P.Nos.5337 and 5338 of 2022

VKCN Realties LLP,
Represented by its Managing Partner. ... Petitioner

Vs

1. National Faceless Assessment Centre,
   Delhi.

2. The Income Tax Officer,
   Non-Corporate Ward 1(6),
   Chennai. ... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorari, to call for the records of the first respondent relating to the assessment order passed u/s.143(3) r.w.s. 144B of the Income Tax Act, 1961 dated 26.04.2021 in DIN:ITBA/AST/S/143(3)2021-22/1032683482(1) for the assessment year 2018-19 and quash the same.

For Petitioner : Mr.T.Vasudevan

For Respondents : Dr.B.Ramasamy
Senior Standing Counsel

ORDER

The petitioner is aggrieved by the Impugned Assessment Order dated 26.04.2021. The specific case of the petitioner is that the petitioner was unaware of the Assessment Order that came to be passed although the petitioner had been issued with a notice under Section 143(2) of the Income Tax Act, 1961, to which the petitioner has furnished the documents on various dates.

2. It is submitted that after the outbreak of Covid 19 Pandemic, notices appears to have been issued to the petitioner which was sent to the registered e-mail in the web portal of the respondent which was operated and accessed only by the Chartered Accountant. On account of confusion due to outbreak of Covid 19 pandemic, it is submitted that notices issued under Section 142(1) were not accessed as the Chartered Accountant who had the password failed to access the same and inform

the petitioner about the same on account of confusion due to outbreak of Covid 19 pandemic. It is submitted that the petitioner was also unaware of the impugned order dated 26.04.2021.

3. It is submitted that only after the respondent issued demand notice under Section 221(1) of the Income Tax Act on 04.02.2022, by sending the aforesaid demand directly to one of the partners of the petitioners' registered e-mail id, the petitioner came to know that the petitioner had already suffered an adverse Assessment Order dated 26.04.2021.

4. Hence, it is prayed that the petitioner be given one more opportunity to explain the case as admittedly the amounts were contributed by each of the five partners towards the capital of the petitioner firm (VKCN Realties LLP).

5. Defending the Impugned Order, the learned Senior Standing Counsel for the respondents submits that the writ petition is liable to be dismissed as the petitioner has an alternate remedy.

6. It is submitted that the Order of Assessment is dated 26.04.2021 and that writ petition has been filed long after the expiry of limitation of filing of appeal before the Appellate Commissioner on 21.02.2022.

7. It is submitted that the atleast five different notices were issued to the petitioner on 19.11.2020, 21.12.2020, 21.12.2020, 04.02.2021, 18.02.2021 and 19.03.2021 under Section 142(1) of the Income Tax Act. A final opportunity was also given to the petitioner to furnish the document on 07.04.2021. Despite the same, the petitioner failed to respond and therefore the respondent was left with no other opportunity except to pass the Impugned Order. Hence, prayed for dismissal of the writ petition.

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

9. The explanation given by the petitioner at the time of arguments before this Court appears to be reasonable. All the notices that were sent to the petitioner under Section 142(1) of the Income Tax Act were to the registered e-mail of the petitioner.

10. Registered e-mail ID was operated by the Chartered Accountant of the petitioner. The notice that were issued under Section 142(1) of the Income Tax Act were during the period when the first wave at its peak and during the period when the second wave had already started.

11. The Impugned Assessment Order has been passed on 26.04.2021 again when the second wave was at its peak. That being the case, the Court is inclined to quash the Impugned Order and the Impugned Demand Notice issued under Section 221(1) of the Income Tax Act and remand the case back to the respondents to pass a fresh order on merits and in accordance with law within a period of eight (8)

weeks from the date of receipt of a copy of this order.

12. The petitioner shall cooperate with the respondent by furnishing all the informations called for along with the reply. The impugned order which stands quashed today shall be treated as a Show Cause Notice for the petitioner to respond.

13. The writ petition stands allowed with the above observations. No cost. Consequently connected miscellaneous petitions are closed.

13.07.2023

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

To

1. National Faceless Assessment Centre,
   Delhi.

2. The Income Tax Officer,
   Non-Corporate Ward 1(6),
   Chennai.

C.SARAVANAN, J.

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