IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.03.2023

CORAM:

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

W.P.No.5584 of 2023 &
W.M.P.Nos.5603, 5605 & 5606 of 2023

Arunachalam Chettiar Narayanan Valli Palaniappan ... Petitioner

vs.

1.The Assessment Unit,
Income Tax Department,
Mahatma Gandhi Road,
Nungambakkam, Chennai - 600 034.

2.The Valuation Officer,
Office of the Valuation Officer - II,
Income Tax Department,
Valuation Cell, 110, 3rd Floor,
Prakash Presidium Building,
M.G.Road, Chennai - 600 034 ...Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for writ of Certiorari calling for the records of the first respondent comprised in the Impugned Assessment Order No.ITBA/AST/S/143(3)/2022-23/1049356247(1) dated 02.02.2023 and all consequential notices issued thereto, including the Demand Notice No.ITBA/AST/S/156/2022-23/1049356345(1) dated 02.02.2023 and quash the same as ultra vires the Income Tax Act, 1961 and as violative of the principles of natural justice and as illegal, arbitrary and unconstitutional.

For Petitioner	: Mr.Suhrith Parthasarathy
For Respondents	: Mr.B.Ramana Kumar, Senior Standing Counsel. Assisted by Mr.D.Prabhu Mukund Arun Kumar Junior Standing Counsel

ORDER

The petitioner has challenged the impugned assessment order dated 02.02.2023 as well as the consequential demand notice dated 02.02.2023 on the ground of violation of principles of natural justice.

2. Mr.B.Ramana Kumar, learned Senior Standing Counsel assisted by Mr.D.Prabhu Mukund Arun Kumar, learned Junior Standing Counsel accepts notice on behalf of the respondents. By consent of both the parties, this writ petition is taken up for final disposal in the admission stage itself.

3. Heard Mr.Suhrith Parthasarathy, learned counsel for the petitioner and Mr.B.Ramana Kumar, learned Senior Standing Counsel assisted by

Mr.D.Prabhu Mukund Arun Kumar, learned Junior Standing Counsel appearing for the respondents.

4. The petitioner has contended that despite a specific request having been made to cross examine M/s.Baashyaam Construction Private Limited, the developer who was issued summons by the respondents under section 131(1)(b) of the Income Tax Act, the petitioner was unable to cross examine the witness on the ground that the link was not provided to him by the respondents in the web portal to enable him to cross examine M/s.Baashyaam Construction Private Limited, through video conferencing. As per the summons issued to M/s.Baashyaam Construction Private Limited (the developer), by the respondents under section 131(1)(b) of the Income Tax Act, the time was fixed by the respondents for cross examining M/s.Baashyaam Construction Private Limited, on 09.01.2023 at 3.00 pm. According to the respondents, as seen from the impugned assessment order, Mr.Elango (Finance Department, M/s.Baashyaam Construction Private Limited) attended the Video Conference on the scheduled date and time. However, the Assessee did not join the Video Conference to cross examine Mr.Elango, the witness of M/s.Baashyaam Construction Private Limited.

5. The petitioner categorically contends that since he was not provided with a link on the scheduled date and time, he was unable to appear through video conferencing and cross examine Mr.Elango, the witness of M/s.Baashyaam Construction Private Limited. On the last hearing date, on 23.02.2023, this Court directed the learned Central Government Standing Counsel appearing for the respondents to get instructions from the respondents as to whether a link was given to the petitioner on 09.01.2023 to enable the petitioner to cross examine Mr.Elango, (Finance Department, M/s.Baashyaam Construction Private Limited).

6. Today, it is informed by the learned Standing Counsel appearing for the respondents that the respondents do not have any proof to show that the link was provided to the petitioner on the scheduled date i.e., on 09.01.2023 to enable the petitioner to cross examine the representative of M/s.Baashyaam Construction Private Limited. Therefore, the statement made by the petitioner that no link was given to him on the scheduled date ie., on 09.01.2023 has to be accepted by this Court.

7. However, the impugned assessment order has been passed, after observing that the Assessee did not join the Video Conferencing on 09.01.2023. For no fault of the petitioner in view of the fact that he was not provided with a link, he was unable to cross examine Mr.Elango, the representative of M/s.Baashyaam Construction Private Limited. Since there is no fault on the part of the petitioner, the impugned assessment order has to be necessarily quashed and the matter has to be remanded back to the respondents for fresh consideration from the stage when the petitioner was supposed to have cross examined the representative of M/s.Baashyaam Construction Private Limited on 09.01.2023, on merits and in accordance with law within a time frame to be fixed by this Court.

8. For the foregoing reasons, the impugned assessment order dated 02.02.2023 and the consequential demand notice dated 02.02.2023 pertaining to the assessment year 2017-18 are hereby quashed and the matter is remanded back to the first respondent for fresh consideration on merits and in accordance with law and the first respondent shall proceed with the assessment from the stage when the petitioner was supposed to

have cross examined the representative of M/s.Baashyaam Construction Private Limited, Mr.Elango ie., on 09.01.2023 and pass final orders on merits and in accordance with law within a period of twelve weeks from the date of receipt of a copy of this Order.

9. With the aforesaid directions, this writ petition is disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

02.03.2023

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Index : Yes/No
Speaking/Non speaking orders
Neutral citations : Yes/No

To

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ABDUL QUDDHOSE, J.

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