IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.07.2023

CORAM

THE HON'BLE **MR.JUSTICE C.SARAVANAN**

W.P.No.8988 of 2022
and
W.M.P.Nos.8806 and 8807 of 2022

Konganapuram Venkatesan Nachiappan,
No.9, Blue Beach Road,
Neelangarai, Chennai – 600 040.
previously at:
92/57, Manohar Apartments, IV Main Road,
Gandhi Nagar, Adyar, Chennai – 600 020. ... Petitioner

Vs.

1.The Assistant Commissioner of Income Tax
Corporate Circle 4(1),
No.121, M.G.Road, Nungambakkam,
Chennai – 600 034.

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

Prayer: Writ Petition filed under Article 226 of Constitution of India, for issuance of a Writ of Certiorari, to call for the records of the respondents contained in its notice bearing DIN and Notice No.ITBA/AST/S/148/2020-21/1032113706(1) dated 31.03.2021, issued by the 1st respondent under Section 148 of the Income Tax Act, 1961 for PAN:ABWPN7227K, for Assessment Year 2013-14, and all proceedings in furtherance thereof, including the assessment order bearing DIN:ITBA/AST/S/14/2021-22/1042165004(1), dated 30.03.2022, passed by the 2nd respondent under Section 147 r/w Section 144B of the Income Tax Act, 1961 for PAN:ABWPN7227K, for Assessment Year 2013-14 and to quash the same.

For Petitioner : Mr.Suhrith Parthasarathy

For Respondents : Mr.V.Mahalingam
Senior Standing Counsel

ORDER

The petitioner has challenged the impugned Assessment order dated 30.03.2022 for the Assessment Year 2013-14.

2. The specific case of the petitioner is that the petitioner was an employee of a company namely M/s.Numeric Power Systems Limited. This name was later changed to M/s.Indo Asian Electric Private Limited and thereafter to M/s.Novateur Electricals and Digital Systems Private Limited.

3. It is the case of the petitioner that the petitioner has also resigned from the aforesaid company during March 2018. The specific case of the petitioner is that scrutiny assessment was also completed on 28.03.2016 for the Assessment Year 2013-14. After the assessment was completed, the respondents have initiated the proceeidngs under Section 133(1A) of the Income Tax Act, 1961 on 23.09.2019, which was followed by a notice under Section 148 of the Income Tax Act, 1961. The petitioner has also replied to the above notice dated 27.04.2021 and 25.11.2021.

4. The learned counsel for the petitioner would submit that in the reply dated 27.04.2021, the petitioner had specifically requested the respondents to furnish the reasons for reopening of the assessment under section 148 of the Income Tax Act, 1961. It is submitted that reason has been furnished long after on 28.02.2022, i.e, about one month before the time for completing the assessment was lapsed on 31.03.2022.

5. He would further submit that however on 12.03.2022, the respondents have passed an order disposing the petitioner's objection for reopening the assessment.

6. He would therefore submit that after disposal of the objection to reopen the assessment, the respondents have issued a draft Show Cause Notice under Section 144 of the Income Tax Act, 1961. By which time, the petitioner has also furnished certificate from ICICI bank on 14.03.2021, whereby, it has been confirmed that the petitioner is not an account holder of Account No.602205046271 and that the said account stands in the name of M/s.Novateur Electrical and Digital Systems Private Limited.

7. It is submitted that the respondents are required and also furnished a link for personal hearing along with the notice issued under Section 144 of the Income Tax Act, 1961. It is further submitted that the petitioner has also requested for a personal hearing in the reply dated 16.03.2022. Despite the same, the respondents have straight away proceeded to pass a speaking order.

8. The learned Senior Standing Counsel for the respondents on the other hand would submit that the writ petition is without merits. It is therefore submitted that the petitioner has an alternate remedy, as the petitioner has not challenged the order dated 12.03.2022, disposing the petitioner's objection to reopen the assessment and notice issued under Section 148 of the Income Tax

Act, 1961. Hence, he prays for the dismissal of the present writ petition.

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

10. In my view, the impugned order is not sustainable, particularly, in the light of the fact that the petitioner has specifically requested for a personal hearing in response to notice issued under Section 148 of the Act on 15.03.2022 vide reply dated 16.03.2022. That apart, the petitioner has been asked the respondents for a reason to reopen the assessment which was not furnished earlier. It was furnished only after the disposing of the petitioner's objection for reopening the assessment, after the order was passed. The reason for reopening of the assessment on 12.03.2022 also does not make it clear as to whether the amount of Rs.2,17,16,42,722/- was deposited in the petitioner's account or in the account of the said M/s.Novateur Electricals and Digital Systems Private Limited.

11. Considering the above, the impugned order is set aside and the case is remitted back to the respondents to pass a speaking order within a period

of 45 days from the date of receipt of a copy of this order.

12. Needless to state, before passing such order, the petitioner shall be heard. Liberty is given to the petitioner to file any reply/additional representation, if any, within a period of 15 days from the date of receipt of a copy of this order.

13. This writ petition is allowed with the above observations. No costs. Consequently, connected writ miscellaneous petitions are closed.

17.07.2023

Index : Yes/No
Internet : Yes/No
Speaking/Non-speaking Order
Neutral Citation:Yes/No
jas

To

1.The Assistant Commissioner of Income Tax
Corporate Circle 4(1),
No.121, M.G.Road, Nungambakkam,
Chennai – 600 034.

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

C.SARAVANAN, J.

jas

W.P.No.8988 of 2022
and
W.M.P.Nos.8806 and 8807 of 2022

17.07.2023