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W.P.Nos. 9142 & 9145 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.03.2023

CORAM :

The HONOURABLE DR.JUSTICE ANITA SUMANTH

W.P.Nos.9142 & 9145 of 2023

and

W.M.P.Nos. 9281 & 9282 of 2023

Shapoorji Pallonji Solar Holdings Private Limited
Rep. By its Authorised Signatory, Mr.Viral Mehta
SP Centre, 41/44, Minoo Desai Marg,
Colaba, Mumbai 400 005.

.. Petitioner
in both writ petitions

VS

1.The Income Tax Officer
Income Tax Department,
National Faceless Assessment Centre,
Ministry of Finance,
Room No.401, 2nd Floor, E-Ramp,
Jawaharlal Nehru Stadium,
Delhi – 110 003.

2.The Deputy Commissioner of Income Tax
Corporate Circle 3(1)
Ayakar Bhavan, Nungambakkam,
Chennai - 34.

.. Respondents
in both writ petitions

Prayer in W.P.No.9142 of 2023: Petition filed under Article 226 of the Constitution of India praying to issue a writ of certiorari calling for the records of demand notice for AY 2021 – 22 in DIN ITBA/AST/156/2022-23/1048293085(1) dated 28.12.2022 issued under Section 156 of the Income-Tax Act, 1961 on the file of the first respondent and to quash the same as arbitrary and illegal.

Prayer in W.P.No.9145 of 2023: Petition filed under Article 226 of the Constitution of India praying to issue a writ of certiorari calling for the records of demand notice for AY 2021 – 22 in DIN



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ITBA/AST/143(3)/2022-23/1048293030 dated 28.12.2022 issued under Section 143(3) read with Section 144B of the Income-Tax Act, 1961 on the file of the first respondent and to quash the same as arbitrary and illegal.

For Petitioner : Mr.Vijay Narayan,
Senior Counsel
for Mr.Rahul Unnikrishnan
(in both writ petitions)

For Respondents : Ms.S.Premalatha
Junior Standing Counsel
(in both writ petitions)

COMMON ORDER

The petitioner has challenged order of assessment dated 28.12.2022 passed in terms of the provisions of the Income-Tax Act, 1961 (in short, 'Act'). Various grounds have been raised challenging the impugned order, primary of which is the violation of principles of natural justice.

2. Mr.Vijay Narayan, learned Senior Advocate appearing for Mr.Rahul Unnikrishnan, learned counsel on record, would urge the point that the order of assessment had travelled beyond the scope of show-cause notice. While the order rejects the petitioner's entitlement to carry-forward long term capital loss, such a proposal does not form part of pre-assessment show-cause notices.

3. Normally this Court is inclined to treat violation of



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principles of natural justice, particularly of the nature as set out by the petitioner hereinbefore, seriously, and there have been several instances where this Court has intervened in the order of assessment in question, directing de novo assessment, in line with the principles of natural justice.

4. However, in the present case, the petitioner has challenged the impugned order of assessment by way of statutory appeal in January, 2023. Inter alia the petitioner has specifically raised the ground now raised and argued in this writ petition. The petitioner has approached the statutory authority with the full belief that this is the appropriate avenue for remedy. Remedy under Article 226 of the Constitution of the India constitutes an extraordinary remedy but in this case, it has been resorted to only as an afterthought. In such circumstances, I am not inclined to consider the identical prayer now raised by way of writ petition.

5. The petitioner relies upon the judgment of the Hon'ble Supreme Court in the case of *Tin Box Company v Commissioner of Income-Tax* [2001] 249 ITR 216 (SC), decision of this Court in the case of *K.S.Shivji & Co., v Joint Commercial Tax Officer, Esplanade Division, Madras* 1965 SCC Online Mad 87, decision of Bombay High



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Court in the case of *Irecti Services Private Limited v The Assistant Commissioner of Income Tax, International Tax, Circle 2(1)(2)* [W.P.No.1439 of 2021 dated 25.10.2021] as well as decision of Calcutta High Court in the case of *Kantilal Somehand Shah and Another v Collector of Customs & C.Ex., West Bengal and another* 1982 (10) E.L.T. 902(Cal.).

6. They point out that in the cases cited above, the respective petitioners had availed appellate remedy despite which the Courts were inclined to intervene for violation of principles of natural justice.

7. The Division Bench of this Court in the case *K.S.Shivji* (supra) has, at paragraph 3, has reiterated the position that when a statutory remedy is available to an assessee, he must first resort to it and in a case where appeal remedy was availed, Courts are normally reluctant to interfere with an order of assessment. The Court has, also observed that there might be cases where the aforesaid rule may not outweigh other considerations which may compel interference. In that case they were of the view that such interference was warranted.



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8. In the present case, the revenue impact of the disallowance in the order of assessment is nil, though the assessee is aggrieved by the fact that the entitlement to carry forward losses has been rejected. That apart, the power of an appellate authority under the Act is co-terminus with that of an Assessing Officer and hence any lacunae in procedure can well be corrected even at that stage. There are thus, in my considered view, no extraordinary circumstances in the present case to persuade me to intervene in the impugned order and I thus leave it to the petitioner to pursue the statutory appeal that it has filed.

9. These writ petitions are dismissed. No costs. Connected miscellaneous petitions are closed.

29.03.2023

Index:Yes
Neutral Citation:Yes
ssm

To

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DR. ANITA SUMANTH,J.

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