IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.09.2023

CORAM :

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.No.10725 of 2022
and
W.M.P.Nos.10369 and 10370 of 2022 and W.M.P.No.258 of 2023

Mahindra World City Developers Limited,
Represented by its Authorised Signatory
K.K.Viswanathan,
17/18, Mahindra Towers,
Patullous Road, Mount Road,
Chennai - 600 002, Tamil Nadu. ... Petitioner

Vs.

1.Additional/Joint/Deputy/Assistant
Commissioner of Income Tax,
National Faceless Assessment Centre (NFAC),
Ministry of Finance,
Income Tax Department,
North Block,
New Delhi - 110 001.

2.The Joint Commissioner of Income Tax,
Corporate Range 4,
Room No.427,
Main Building - IV Floor,
No.121, Mahatma Gandhi Road,
Nungambakkam,
Chennai, Tamil Nadu - 600 034.

3.The Assistant Commissioner of Income Tax,
Corporate Circle 4(1),
Room No.403,
Main Building-IV Floor,
No.121, Mahatma Gandhi Road,
Nungambakkam,
Chennai, Tamil Nadu - 600 034. ... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorari, to call for the records relating to the impugned order bearing DIN No.ITBA/AST/S/147/2021-2022/1042344311(1) dated 29.03.2022 passed by the first respondent and the accompanying demand notice bearing DIN No.ITBA/AST/S/156/2021-2022/1042345453(1) dated 29.03.2022, quash the same.

For Petitioner : Mr.Raghavan Ramabadran
for M/s.Lakshmi Kumaran
and Sridharan Attorneys

For Respondents : Mr.V.Mahalingam
Senior Standing Counsel

ORDER

This case was heard at length.

2. The petitioner has challenged the impugned Assessment Order in DIN No.ITBA/AST/S/147/2021-2022/1042344311(1) dated 29.03.2022 of the first respondent.

3. The impugned Assessment Order has preceded several notices which were issued to the petitioner were also responded by the petitioner up to a particular point of time.

4. It is the specific case of the petitioner that the notices were not responded after 03.12.2021 as one of its employee namely Cherukuri Chaitanya, who was handling taxation of the petitioner had left the organization.

5. The learned counsel for the petitioner would submit that the impugned Assessment Order has also been passed in violation of Section 144B(1)(xiv) of the Income Tax Act, 1961 (hereinafter referred to as the IT Act).

6. Specifically, it is submitted that the National Faceless Assessment Centre (NFAC) has three options once the Draft Assessment Order is made by the Assessment Unit under Section 144B(1)(xiv) of the IT Act.

7. The learned counsel for the petitioner has placed reliance on two decisions of this Court rendered in **P.T.Lee Chengalvaraya Naicker Trust, Trusted Represented by its Secretary** Vs. **Income Tax Officer and another** vide its order dated 30.09.2022 in W.P.Nos.16373 of 2021 etc batch and the decision of this Court rendered in **Akshya Infrastructure Pvt. Ltd, Represented by its Authorised Signatory** Vs. **The Central Board of Direct Taxes and another** vide its Order dated 13.06.2022 in W.P.No.7083 of 2021.

8. The learned counsel for the petitioner submits that although there was a failure on the part of the petitioner to participate in the proceedings after a notice under Section 144 of the IT Act was issued, the respondents have failed to comply with the mandatory requirements of Section 144B(1)(xvi) of the IT Act.

9. It is therefore submitted that the petitioner may be given one opportunity to explain the case back as the issue arises only on account of purchase of parcels of land, which has been already explained by the

petitioner stating that the petitioner had generated the amounts by taking the term loan and through issue of equity shares in the market.

10. The impugned Assessment Order is defended by the learned Senior Standing Counsel for the respondents on the ground that the impugned Assessment Order is well-reasoned and requires no interference.

11. That apart, it is submitted that the petitioner has an appellate remedy before the Appellate Commissioner under Section 246A of the IT Act.

12. That apart, it is submitted that the notices were sent to the petitioner in all the four email-IDs and they were responded by the petitioner up to a particular point of time and thereafter the petitioner had failed to respond to the same. It is further submitted that the petitioner was issued with a Show Cause Notice dated 17.03.2022 which was followed by the impugned Assessment Order dated 29.03.2022 strictly in consonance with the provisions of Section 144B of the IT Act as in force with effect from 01.04.2021.

13. That apart, it is submitted that the petitioner has also failed to intimate the Income Tax Department as is required regarding the changes of email-ID pursuant to the changes in the management of the Company.

14. That apart, it is submitted that the decision rendered in the two cases cited above are not applicable to the facts and circumstances of the case.

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

16. The procedure for assessment under Section 144B of the IT Act as in force with effect from 01.04.2021 till 31.03.2022 was already available under the E-Assessment Scheme 2019.

17. The E-Assessment Scheme 2019 has been subsumed into Section 144B of the IT Act, 1961, with effect from 01.04.2021 till 31.03.2022.

Thereafter, a slightly different version of Section 144 exist in the Income Tax Act, 1961 with effect from 01.04.2022.

18. Section 144B of the IT Act is procedural in nature. There is no dispute that the petitioner has been issued with a Show Cause Notice under Section 144 of the IT Act on 17.03.2022. As per Section 144B(1)(xi) of the IT Act, where, an assessee fails to comply with the notice referred to in clause (vi) or notice issued under sub-section (1) of section 142 or with a direction issued under sub-section (2A) of section 142, the National Faceless Assessment Centre shall serve upon such an assessee a notice under section 144 of the IT Act giving him an opportunity to show-cause, specifying a date and time to respond to the notice and to show cause as to why the assessment should not be completed to the best of its judgment.

19. The petitioner was required to respond to the same within the time stipulated in the said notice. As per the aforesaid notice, the petitioner was to respond on or before 23.03.2022 by 23.59 hours.

20. In this case, the petitioner failed to respond to the said notice dated 17.03.2022. Therefore, Section 144B(1)(xiii) of the IT Act kicked in, as per which, where, an assessee fails to file response to the notice referred to in clause (xi) within the time specified therein or within the extended time, if any, the National Faceless Assessment Centre shall intimate such failure to the Assessment Unit.

21. The Assessment Unit is thereafter required to take into account of all the relevant materials available on the record and make in writing, a Draft Assessment Order or, in a case where intimation referred to in clause (xiii) is received from the National Faceless Assessment Centre, make in writing, a Draft Assessment Order to the best of its judgment, either accepting the income or sum payable by, or sum refundable to, the assessee as per his return or make such variation to the said income or sum, and send a copy of such order to the National Faceless Assessment Centre.

22. Once a Draft Assessment Order is passed/made by the Assessment Unit, the Assessment Unit is required to be send it to the National Faceless

Assessment Centre which has to examine the Draft Assessment Order in accordance with the risk management strategy specified by the Board, including by way of an automated examination tool, whereupon it may decide either to finalise the assessment, in case no variation prejudicial to the interest of assessee is proposed, as per the draft assessment order and serve a copy of such order and notice for initiating penalty proceedings, if any, to the assessee, along with the demand notice, specifying the sum payable by, or refund of any amount due to, the assessee on the basis of such assessment or to provide an opportunity to the assessee, in case any variation prejudicial to the interest of assessee is proposed, by serving a notice calling upon him to show case as to why the proposed variation should not be made or to assign the draft assessment order to a review unit in any one Regional Faceless Assessment Centre, through an automated allocation system, for conducting review of such order.

23. A reading of the above provision indicates that after the procedure under Section 144B(1)(xvi) of the IT Act is completed, in case where a Draft Assessment Order is referred for review to the Review Unit, the Review Unit has to conduct the review of the Draft Assessment Order referred to it by the

National Faceless Assessment Centre whereupon, it may decide to concur with the Draft Assessment Order and intimate the National Faceless Assessment Centre about such concurrence or to suggest such variation, as it may deem fit, in the draft assessment order and send its suggestions to the National Faceless Assessment Centre.

24. The National Faceless Assessment Centre shall, thereupon on receiving the concurrence of the Review Unit following the procedure laid down in sub-clause (a) of clause (xvi) or sub-clause (b) of clause (xvi).

25. A reading of the facts indicates that there has been compliance with the provisions of Section 144B of the IT Act.

26. Once the Draft Assessment Order is made by the Assessment Unit as is required under Section 144B(1)(xiv) of the IT Act, the National Faceless Assessment Centre has an option to follow any of the procedure under Section Section 144B(1)(xvi) of the IT Act which has been enumerated above.

27. Therefore, the procedure that has been adopted while passing the impugned Assessment Order cannot be faulted.

28. At the same time, the fact remains that the petitioner had failed to respond to the notice dated 03.03.2022 which has ultimately culminated in the impugned Assessment Order dated 29.03.2022.

29. The petitioner may have a case on merits, which would have been required to be examined properly by the National Faceless Assessment Centre by taking note of all the responses given by the petitioner before the case was referred to the National Faceless Assessment Centre.

30. Considering the above, the impugned Assessment Order is set aside and the case is remitted back to the respondents to pass a fresh order on merits and in accordance with law within a period of twelve weeks from the date of receipt of a copy of this order.

31. The impugned Assessment Order which stands quashed shall be treated as a corrigendum to the Show Cause Notice dated 17.03.2022 issued to the petitioner under Section 144 of the IT Act.

32. The petitioner shall keep its response together with all annexures ready and shall upload the same as and when the respondents gives intimations to upload the same.

33. Needless to state, before passing such order, the petitioner shall be heard through video conferencing.

34. This Writ Petition is disposed of with the above observations. No costs. Consequently, connected Writ Miscellaneous Petitions are closed.

26.09.2023

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

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