IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.08.2023

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

W.P.No.11076 of 2022
and
W.M.P.Nos.10667, 25041 and 25052 of 2022

Mr.B.&G Infrastructure Company Pvt Ltd,
Represented by its Authorised Signatory,
Mr.A.K.Pradhan
Old No.10, New No.25, Sir Madhavan Nair Road,
Nungambakkam, Mahalingapuram,
Chennai – 600 034. ... Petitioner

Vs

1.The Deputy Commissioner of Income Tax,
Corporate Circle 1(1),
121, Mahatma Gandhi Road,
Nungambakkam, Chennai – 34.

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

Prayer: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, to call for the records on the file of the 2nd respondent and quash the impugned order under Section 147 r/w Section 144 read with Section 144B of the Income Tax Act, 1961 dated 29.03.2022 passed by the 2nd respondent for the AY 2016-17 as illegal, arbitrary and against the settled principles of law and consequently direct the 2nd respondent to grant an opportunity to the petitioner to reply to the Notice(s).

For Petitioner : Ms.Vandana Vyas

For Respondents : Mr.B.Ramana Kumar
Senior Standing Counsel
assisted by
Mr.D.Prabhu Mukund Arun Kumar
Junior Standing Counsel and
Mr.S.Rajesh
Junior Standing Counsel

ORDER

The petitioner is aggrieved by the impugned Assessment order dated 24.12.2018. By the impugned order, a sum of Rs.1,78,35,270/- has been confirmed for the Assessment Year 2016-2017. The impugned order is pursuant to a notice issued under Section 148 of the Income Tax Act, 1961 on 31.03.2021 after regular Assessment/scrutiny Assessment was completed on 24.12.2018 under Section 143(3) of the Income Tax Act, 1961.

2.The notice seeking to re-open the Assessment under Section 148 of the Income Tax Act, 1961 was issued to the petitioner on 31.03.2021 and was transmitted to the registered E-mail ID given by the petitioner namely gomathi@saheliexports.com. The said person had apparently resigned and was relieved by the petitioner. Therefore, an auto message was generated on 01.04.2021 in said E-mail Id. In the said, message it was stated that all the communications be sent to finance@saheliexports.com.

3. Despite the same, the Department continued to issue notices to the said E-mail ID of the said Mrs.G.Gomathi who had resigned and was relieved from the services of the petitioner. The impugned order also preceded with a notices issued under Section 142(1) of the Income Tax Act, 1961 and a Show Cause Notices dated 11.03.2021 and 25.03.2022 in accordance with Section 144(B) of the Income Tax Act as amended with effect from 01.04.2022. The said Show Cause Notice dated 11.03.2021 was also sent to the petitioner's Chartered Accountant, whose address was traced out by the Department from the returns filed by the petitioner.

4. Thus, it emerges that the petitioner had failed to make necessary changes in the web portal regarding the correct address. The Department completed the Assessment by 31.03.2022. Since the petitioner failed to amend the address for communication, as is required under Sections 282, 282A of the Income Tax Act, 1961 read with Rule 127 of the Income Tax Rules, 1962, the impugned order has been passed exparte. The impugned order which has been passed cannot be questioned, as the petitioner has failed to participate in the proceedings either by filing a reply to the Show Cause Notice or by giving correct address.

5. A auto generated E-mail sent on 01.04.2021 asking the Income Tax Department to sent all communications to the address at finance@saheliexports.com was not sufficient.

6. The petitioner should have taken active steps to alter the address in the web portal to enable the Income Tax Department to complete the Assessment and to receive proper notice.

7. However, the fact remains that order has been passed. The petitioner has not filed any reply to the Show Cause Notices issued on 23.02.2022, 11.03.2022 and 25.03.2022. The petitioner has also not responded to the any of the previous notices issued under Section 142(1) of the Income Tax Act on 09.02.2022.

8. Considering the over all facts and circumstances of the case and to balance the interest of the either parties, Court is inclined to set aside the impugned order and remits the case back to the respondent to pass a fresh order on merits subject to the petitioner depositing 20% of the tax amount that was determined vide the impugned order and as quantified in notice under Section 156 of the Income Tax Act, 1961 dated 29.03.2022. Subject to the petitioner depositing the aforesaid amount in time, the second respondent shall pass appropriate orders on merits and in accordance with law, within a period of six months from the date of receipt of a copy of this order. In case the petitioner fails to deposit the amount, within such time, this order shall automatically stands withdrawn as if this writ petition was dismissed, in which case the

respondents are at liberty to proceed against the petitioner in accordance with law.

9. This writ petition stands disposed of with the above observations. No costs. Consequently, connected writ miscellaneous petitions are closed.

29.08.2023

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

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Corporate Circle 1(1),
121, Mahatma Gandhi Road,
Nungambakkam, Chennai – 34.

2.The Additional/Joint/Deputy/
Assistant Commissioner of Income Tax/
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National Faceless Assessment Centre,
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C.SARAVANAN,J.

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