IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **11.09.2023**

CORAM

THE HONOURABLE MR.JUSTICE C. SARAVANAN

W.P.No.11079 of 2023 and
W.M.P.Nos.10950 and 10951 of 2023

Mohler Machine Works Pvt. Ltd.,
representation by its Managing Director,
V.Balasubramanian,
57, Old No.46/1, Bharatidasan Nagar,
Teachers Colony, Ramanathapuram,
Coimbatore 641 045. … Petitioner

Vs.

1. The Principal Commissioner of Income Tax,
   Coimbatore-1,
   67A Race Courtse,
   Coimbatore 641 018.

2. National Faceless Assessment Centre,
   Income Tax Department,
   Room No.401, 2nd Floor,
   E-Ramp, Jawaharlal Nehru Stadium,
   Delhi 110 003.

3. The Income Tax Officer,
Corporate Ward 2,
Coimbatore Main Building,
63, Race Course Road,
Coimbatore 641 018. … Respondents

Prayer : Writ Petition filed under Article 227 of Constitution of India, praying to issue Writ of Certiorari, calling for records pertaining to the impugned order issued by the 1st respondent in PAN: AAICM 3872F in Revision No.PCIT, Coimbatore-1/Revision-264/100000317041/2022, dated 23.03.2023 in DIN & Order No. ITBA/REV/F/REV7/2022-23/1051166870(1) and quash the same as illegal.

For Petitioner	:	Mr.T.N.Seetharaman
For Respondents	:	Mr.R.S.Balaji, Standing counsel

ORDER

Heard the learned counsel for the petitioner and perused the impugned order dated 23.03.2023 passed by the 1st respondent.

2. This Writ Petition has been filed, to quash the impugned order, dated 24.03.2023 passed by the 1st respondent in PAN: AAICM 3872F in Revision No.PCIT, Coimbatore-1/Revision-264/100000317041/2022 in DIN & Order No. ITBA/REV/F/REV7/2022-23/1051166870(1).

3. The relevant portion of the impugned order reads as under:

> *"4. I have carefully considered the materials available on record (viz.), the petition u/s 264 of the Act, the factual report of the AO as well as the Range Head and also the Assessment Order. The assessee had submitted petition u/s 264 of the Act against the order passed u/s 147 read with section 144B of the Act dated 24/03/2022. A perusal of the Assessment Order reveals that the department was in possession of information pointing towards income escaping assessment. The Assessment Order also says that after the case was taken up for scrutiny, statutory notices as and when required, was issued and the assessee had filed replies also. It is clear from the Assessment Order, supra, that the Faceless Assessing Officer, after considering the reply filed by the assessee and following the due procedure of law has concluded the assessment based on the material available on hand. Principle of natural justice has been duly followed. The replies of the assessee on the issues raised by the FAO has been duly considered and negated by the FAO with proper reasoning. Having perused the facts of the case, the chronology of sequences in the Assessment Order, and the conclusion made by the FAO, I decline to interfere in the Assessment Order passed supra for the assessment year 2017-18, and therefore the petition is disposed of as above.*

4. By the impugned order dated 23.03.2023, the Commissioner of Income Tax, PCIT, Coimbatore had rejected the application filed by the petitioner for revising the Assessment Order dated 24.03.2022 for the assessment year 2017-2018.

5. The Assessment Order, dated 24.03.2022 precedes notices under Section 142 (1) of the Income tax Act and a Show Cause Notice to which the petitioner has given a detailed reply. The Assessing Officer had however confirmed the proposal in the Show Cause Notice, dated 16.03.2022 with the following observations:

> *“7. Accordingly, a finale show-cause notice issued to the assessee ITBA/AST/F/147 (SCN) /202122/ 1040887289(1)) on dated 16.03.2022 for furnishing the reply on or before date 22.03.2022 along with final draft Assessment Order wherein it was proposed to addition as above which was duly served by email to the assessee vide the show-cause notice, the assessee filed reply on 19.03.2022 and stated that- “The assessee accepted the business transactions from M/s. United Polyfab Gujarat Ltd. for supply of Mohler make Overhead Cleaner machines and Bobbin Transport system during the under consideration year. We have no other transactions with these parties and hence, the claim made by the Party is completely baseless allegations." Which is carefully examined but assessee reply not acceptable. Therefore, the assessee company has availed fictitious loan of Rs.2,16,87,750/-by way of by modus operandi during the year under consideration are again unsubstantiated & unexplained for proposed modification. Hence, the Assessment Order passed as discussed above.”*

6. Thus it is clear that both the 2nd respondent who has passed the Assessment Order dated 24.03.2022 under Section 147 r/w. 144 B of the Income Tax Act and the 1st respondent/ Commissioner of Income Tax who has passed the impugned order dated 23.03.2023 under Section 264 of the Income Tax Act, 1961, have passed the orders without application of mind. There is no clear finding in the impugned orders passed either by the 1st respondent or by the 2nd respondent herein.

7. Considering the above, the impugned order dated 23.03.2023 passed by the 1st respondent is set aside and the case is remitted back to the 2nd respondent. The respondents are directed to furnish all the information, based on which the proposal was confirmed while passing the Assessment Order dated 24.03.2022 by the 2nd respondent within a period of two months from the date of receipt of a copy of this order. Upon receiving the documents, the 2nd respondent shall pass *denovo* orders on merits and in accordance with law, within a period of six months thereafter after affording an opportunity of hearing to the petitioner.

8. With the above direction, this Writ Petition is disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

11.09.2023

vum
Index: Yes/No
Speaking order/Non Speaking order

To

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C. SARAVANAN,J.

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