IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.09.2023

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THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P. No.11709 of 2021
and
W.M.P. No.12466 of 2021

Mangal Chand ... Petitioner

Vs.

1.Additional/ Joint/ Deputy/ Assistant
Commissioner of Income Tax/ Income Tax Officer,
National e-Assessment Centre,
Income Tax Department, Delhi.

2.Income Tax Officer,
Office of the Joint/ Additional Commissioner of
Income Tax, Ward 1, Hosur Range,
Ward 1, Hosur Range,
737/1, 1st Floor, RK Tower,
Maruthi Nagar, Hosur-635 109. ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari calling for the records of the 1st Respondent in the assessment order dated 19.04.2021 and quash the same.

For Petitioner : Mr.P.Jitendra Kumar

For Respondents : Mr.R.S.Balaji

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ORDER

The writ petition is filed praying for a Writ of Certiorari calling for the records of the 1st Respondent in the assessment order dated 19.04.2021 and quash the same.

2. The petitioner is an individual assessee viz., the propreitor of M/s.Rakhee Aluminium Hardware centre engaged in the business of trading in Aluminium materials. The petitioner filed his income tax returns for the assessment year 2018-19, which was selected for scrutiny vide notice dated 22.09.2019 under Section 143(2) of the Income Tax Act, 1962 (hereinafter referred to as "the Act"). On 15.10.2020, the petitioner was in receipt of a notice stating that scrutiny assessment for the assessment year 2018-19 shall be completed under Faceless Assessment Scheme, 2019 (previously e-Assessment Scheme, 2019). Thereafter, another notice was issued on

10.12.2020 seeking various details and documents relating to the scrutiny assessment. The petitioner sought for an adjournment on account of being tested positive for COVID-19. The respondent *vide* notice dt. 22.12.2020 granted time only till 05.01.2021. Pursuant thereto, the petitioner submitted his preliminary response on 05.01.2021 along with available details and documents and sought for further time in order to submit the remaining details through his auditor. Thereafter, 1st Respondent issued notices dated 13.01.2021, 20.01.2021 and 02.02.2021. The petitioner sought time to submit his reply as he had not recovered completely from COVID-19. Time was granted till 19.02.2021 to furnish necessary documents. A show cause notice was issued by the 1st Respondent on 19.02.2021 under Section 143(3) of the Act. The petitioner filed his objections to the aforesaid notice on 25.02.2021 along with supporting documents and sought for a personal hearing. Subsequent to the filing of objections by the petitioner against the show cause notice, the 1st Respondent sought for further details *vide* notice dated 27.02.2021 under Section 142(1) of the Act to be furnished by the petitioner on or before 07.03.2021. The petitioner uploaded his reply on 09.03.2021 since due date for filing reply was 07.03.2021 which falls on Sunday and he tried to file the reply on 08.03.2021 but due to technical glitches documents were not uploaded properly. Thus, the petitioner indicated that the response was submitted on 09.03.2021. Again on 10.03.2021 a notice under section 142 (1) of the Act was issued to furnish the remaining details and documents reply and to submit his reply by 17.03.2021. On 17.03.2021, the petitioner submitted his reply indicating insofar as Mahazar is concerned the same is being pursued with the GST department and shall submit the same on its receipt. One more notice was issued on 18.03.2021 and the petitioner responded to it on 25.03.2021. Thereafter, on 30.03.2021, after a series of notice under Section 142 (1) of the Act a notice was issued and an adjournment was sought by the petitioner on 03.04.2021 upto 15.04.2021. However, the impugned order of assessment came to be passed on 19.04.2021 stating that the petitioner had failed to establish its claim of deductions with the documentary evidence despite repeated notices.

3. The short question that arises for consideration is whether the impugned order of assessment suffers from violation of principles of natural

justice inasmuch the impugned order of assessment is made without considering the request for adjournment made on 03.04.2021 in response to the notice dated 03.03.2021 granting them time until 03.04.2021.

4. It is submitted by the learned counsel for the petitioner that without dealing with the petitioner's request or informing the petitioner as to whether adjournment request was accepted or rejected, the assessing authority proceeded to make the order of assessment. It was thus submitted that the order suffers from violation of principles of natural justice. The petitioner seeks to place reliance upon the screen shot of the web portal of the IT Department which would reveal that adjournment was sought on 03.04.2021 upto 15.04.2021.

5. To the contrary, it is submitted by the learned counsel for the Respondents that the petitioner has been granted several opportunities and the case of the petitioner that they have been handicapped in view of the seizure of accounts/documents by the GST Department is factually incorrect nor supported by any documentary evidence. It is further submitted that the

Respondent had proceeded to pass the impugned order only after giving the petitioner adequate opportunity and in this regard they sought to place reliance on the Table at Page 2 of the counter, wherein various communications/ orders / notices exchanged between the department and the assessee has been referred to.

6. On perusal of records, this Court finds that a request for adjournment to the notice dated 30.03.2021 was in fact submitted on 03.04.2021 as evident from the screenshot of the Web portal of the respondent Department. The impugned order and the counter proceeds on an erroneous factual premise that the petitioner did not respond to the notice dated 30.03.2021. The revenue has not questioned the genuineness of the screenshot kept at Page No. 217 of the typed set, which would evidence the petitioner's request for adjournment. I would think that there is merit in the submission of the learned counsel for the petitioner that the order is made on non-consideration of the petitioner's request for adjournment and thus suffers from violation of principles of natural justice.

7. In view of the same, the impugned order is set aside and the matter is remanded back to the 1st Respondent to pass fresh orders after affording the petitioner with a reasonable opportunity of hearing on merits and in accordance with law within a period of 4 months from the date of receipt of a copy of this order.

8. The writ petition stands disposed of. No costs. Consequently, the connected miscellaneous petition is closed.

04.09.2023

Speaking (or) Non Speaking Order
Index:Yes/No
Neutral Citation: Yes/No
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To:
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Commissioner of Income Tax/ Income Tax Officer,
National e-Assessment Centre,
Income Tax Department, Delhi.

2.Income Tax Officer,
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MOHAMMED SHAFFIQ, J.

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