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W.P.Nos.11849, 11851, 11854 and 11859 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.04.2023

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THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.Nos.11849, 11851, 11854 and 11859 of 2023

And

**W.M.P.Nos.11746, 11747, 11748, 11749, 11751,
11753, 11757 and 11759 of 2023**

Chennai Port Authority
Rep. by its Financial Advisor and
Chief Accounts Officer
Mr.D.Ramana Murthy

... Petitioner in all the W.Ps.

Vs.

1.The Deputy Commissioner of Income Tax
Non - Corporate Circle – 11 (1),
16, BSNL Building Tower,
2nd Floor, Greams Road,
Chennai – 600 006.

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

... Respondents in all the W.Ps.

Common Prayer:

Petitions filed under Article 226 of the Constitution of India to
issue a Writ of Certiorarified Mandamus to call for the records



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DIN:ITBA/AST/S/147/2022-23/1050725027(1), DIN:ITBA/AST/S/147/2022-23/1050725028(1), DIN:ITBA/AST/S/143(3)/2022-23/1050710062(1) and DIN:ITBA/AST/S/143(3)/2022-23/1050710060(1) respectively, dated 14.03.2023 on the file of the second respondent relating to the A.Ys. 2003 – 04, 2004 – 05, 2005 – 06 and 2006 – 07 respectively and quash the same.

For Petitioner : Mr.G.Baskar
For Respondents : Dr.B.Ramasamy
Senior Standing Counsel (Income Tax)

COMMON ORDER

The petitioner has filed these writ petitions seeking issuance of Writ of Certiorarified Mandamus to call for the records in DIN:ITBA/AST/S/147/2022-23/1050725027(1), DIN:ITBA/AST/S/147/2022-23/1050725028(1), DIN:ITBA/AST/S/143(3)/2022-23/1050710062(1) and DIN:ITBA/AST/S/143(3)/2022-23/1050710060(1) respectively, dated 14.03.2023 on the file of the second respondent relating to the A.Ys. 2003 – 04, 2004 – 05, 2005 – 06 and 2006 – 07 respectively and to quash the same.



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2.The learned counsel appearing for the petitioner submitted

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that the petitioner filed its original Return Of Income for A.Ys. 2003 – 04, 2004 – 05, 2005 – 06 and 2006 – 07 respectively on 01.12.2003, 01.11.2004, 28.10.2005 and 31.10.2006 respectively, declaring a loss of Rs.19,50,71,618/-, declaring income of Rs.25,50,85,380/-, declaring income of Rs.28,18,40,776/- and declaring income of Rs.74,63,59,100/- respectively. The petitioner filed revised Return Of Income on 18.02.2005, 28.03.2006, 30.03.2007 and 31.03.2008 respectively, declaring loss of Rs.46,36,69,115/-, declaring loss of Rs.7,87,87,768/-, admitting income of Rs.29,62,88,056/- and admitting income of Rs.70,96,24,690/- respectively and claimed depreciation.

3.The learned counsel appearing for the petitioner further submitted that the first respondent disallowed the petitioner's claim and recomputed the depreciation available to the petitioner by computing the depreciation on the book value of the assets. Subsequently, the first respondent passed re-assessment order and the same was challenged before the Commissioner of Income Tax (Appeals) – 9, Chennai in ITA Nos.42/09-10, 41/09-10, 50/2009-10



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respectively, who vide order dated 23.03.2011 directed the first respondent to allow exemption under Section 11 of the Income Tax Act (W.P.Nos.11849, 11851, 11854 of 2023). The re-assessment order of the first respondent was challenged before the Commissioner of Income Tax (Appeals) – 12, Chennai, in ITA.No.373/2010-11 who vide order dated 02.12.2011 dismissed the ITA (W.P.No.11859 of 2023).

4.The learned counsel appearing for the petitioner further submitted that the order of CIT (A) was appealed by the Department before the Income Tax Appellate Tribunal in ITA Nos.1152 of 2011, 1153 of 2011, 1154 of 2011 respectively and ITAT vide order dated 07.09.2011 confirmed the order passed by CIT(A) (W.P.Nos.11849, 11851, 11854 of 2023). The order of CIT (A) was appealed by the petitioner before ITAT in ITA No.215 of 2012 and ITAT vide order dated 23.08.2012 allowed the appeal and directed the first respondent to allow exemption under Section 11 of the Income Tax Act (W.P.No.11859 of 2023).

5.The learned counsel appearing for the petitioner further submitted that thereafter, the order of ITAT was challenged by the



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Department before this Court in TCA Nos.267 of 2014, 268 of 2014, 269 of 2014 and 405 of 2013 respectively. This Court vide order

dated 25.08.2022 remanded the matter back to the file of the Assessing Officer, pursuant to which, show cause notice was issued to the petitioner. During enquiry proceedings, petitioner made request for personal hearing through video conferencing with the second respondent, however, the petitioner's request was not considered and the impugned orders were passed.

6.The learned counsel appearing for the petitioner further submitted that the petitioner's request for personal hearing through video conferencing was not considered and the same was mechanically rejected and the impugned orders were passed, which is clear violation of principles of natural justice. In similar circumstances, this Court allowed similar request in W.P.No.21831 of 2021 on 10.02.2023. Accordingly, the learned counsel prayed for allowing these writ petitions.

7.The learned Senior Standing Counsel (Income Tax) appearing for the respondents submitted that there is statute provided for



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personal hearing through video conferencing or physically, however, the petitioner submitted reply for the show cause notices and after considering the petitioner's reply only impugned orders were passed. Further, the petitioner claim that it has to produce voluminous documents before the Authority and hence, personal hearing through video conferencing was not provided to the petitioner. However, the Assessing Officer is sitting at Chennai on 03.05.2023 at Non - Corporate Circle - 11 (1), BSNL Building Tower, Greams Road, Chennai - 600 006 and without prejudice to the rights of the respondents, the petitioner will be given opportunity.

8.In view of the fair submission made by the learned Senior Standing Counsel (Income Tax) appearing for the respondents, the impugned orders passed by the second respondent dated 14.03.2023 are set aside and the matter is remanded back to the Assessing Officer for fresh consideration.

9.The petitioner is directed to appear before the Assessing Officer during the sitting at Chennai on 03.05.2023 in Non - Corporate Circle - 11 (1), BSNL Building Tower, Greams Road, Chennai - 6 at 11.00 a.m. and produce all the necessary documents



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without seeking any further adjournment. On hearing the petitioner, the Assessing Officer shall pass appropriate orders, as early as possible.

10.The writ petitions are allowed on the above terms. No costs. Consequently, the connected miscellaneous petitions are closed.

25.04.2023

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Note: Issue order copy on 26.04.2023

Speaking Order/ Non Speaking Order

Index: Yes/ No

Internet: Yes/ No

To

1.The Deputy Commissioner of Income Tax
Non - Corporate Circle – 11 (1),
16, BSNL Building Tower,
2nd Floor, Greams Road,
Chennai – 600 006.

2.The Assessment Unit
Income Tax Department,
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