IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On	29.08.2023
Pronounced On	13.12.2023

CORAM :

THE HONOURABLE MR. JUSTICE C.SARAVANAN

W.P.Nos.13871 and 9005 of 2023
and
W.M.P.Nos.13523, 13526, 13527, 9122 and 9123 of 2023

Gajaananda Jewellery Mart India Private Limited,
Represented by its Authorised Signatory,
S.Sharma,
896/2, Suriyan Nagar, ABT Road Extension,
Karuvampalayam, Tirupur - 641 604. ... Petitioner in both W.Ps

Vs.

Assessment Unit,
Income Tax Department,
Ministry of Finance,
Government of India. ... Respondent in both W.Ps

Prayer in W.P.No.13871 of 2023**:** Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, to call for the records of the respondent in notice dated 28.02.2023 bearing ITBA/PNL/S/270A/2022-2023/1050188736(1) and consequential notice dated 19.04.2023 bearing ITBA/PNL/F/270A/2023-2024/1052197216(1) and quash the same.

Prayer in W.P.No.9005 of 2023**:** Writ Petition filed under Article 226 of the

Constitution of India to issue a Writ of Certiorari, to call for the records contained in Order dated 28.02.2023 bearing No.ITBA/AST/S/143(3)/2022-2023/1050188651(1) passed by the respondent under Section 143(3) read with Sections 260 and 144B of the Income Tax Act, 1961 for the Assessment Year 2020-2021 in PAN : AAECG1703B and to quash the same as arbitrary, illegal and unjust.

For Petitioner (In both W.Ps)	: Mr.R.V.Easwar Senior Counsel for Mr.Adithya Reddy
For Respondent (In both W.Ps)	: Mr.R.S.Balaji Senior Panel Counsel

COMMON ORDER

By this Common Order, both the Writ Petitions are being disposed of.

2. The petitioner is aggrieved by the impugned Assessment Order dated 28.02.2023 bearing No.ITBA/PNL/S/270A/2022-2023/1050188736(1) in W.P.No.13871 of 2023 and the impugned Order dated 28.02.2023 bearing No.ITBA/AST/S/143(3)/2022-2023/1050188651(1) and the consequential notice dated 19.0.4.2023 bearing ITBA/PNL/F/270A/2023-2024/1052197216(1) in W.P.No.13871 of 2023.

3. This is the second round of litigation before this Court. Earlier, the

petitioner had challenged the Assessment Order dated 26.09.2022 on the ground that the petitioner was not given the opportunity of personal hearing.

4. The petitioner therefore filed W.P.No.27938 of 2022. By an order dated 19.10.2022, the said writ petition was allowed at the stage of admission with the following observations:-

> *"Mr.A.P.Srinivas, learned Senior Standing Counsel accepts notice for the respondents and is armed with instructions to enable final disposal of this matter, even at the stage of admission.*
>
> *2. The challenge is to an order of assessment dated 26.09.2022 passed in terms of the provisions of the Income Tax Act, 1961 (in short 'Act') for the assessment year (AY) 2020-2021. The only submission that is made assailing the impugned order of assessment is violation of principles of natural justice.*
>
> *3. The assessment has come to be completed without affording an opportunity of personal hearing, which the petitioner has specifically sought in its reply dated 23.09.2022. The said reply was uploaded and acknowledged on the same day. The aforesaid reply also finds reference at Paragraph 4.2 of the impugned order of assessment.*
>
> *4. Learned Senior Standing Counsel would, fairly, not dispute the position that the procedure set out for completion of assessment in terms of Section 144B of*

the Act requires that the assessee be heard in person specifically in a situation, such as the present, where the assessee has sought an opportunity of personal hearing.

5. Thus, on this short ground, order of assessment dated 26.09.2022 is set aside. The assessee shall be sent a link for personal hearing within a period of two (2) weeks from date of receipt of a copy of this order, heard and orders passed de novo based on the submissions to be made by the petitioner as well as the reply which is already on record, within a period of four (4) weeks from date of conclusion of personal hearing.

6. Thus writ petition stands allowed. No costs. Connected Miscellaneous Petitions are closed."

5. Pursuant to the aforesaid order dated 19.10.2022, the petitioner was issued with a Show Cause Notice dated 11.01.2023 to which, the petitioner has also replied on 12.01.2023, which is now culminated in the impugned Assessment Order dated 28.02.2023.

6. Pursuant to the impugned Assessment Order dated 28.02.2023, the petitioner has also been issued with the Notice under Section 156 of the Income Tax Act, 1961, whereby the petitioner has been called upon to pay a

sum of Rs.29,54,58,896/-.

7. A detailed submission was made by the petitioner on merits of the case. It is submitted that the personal hearing that was granted by the respondent has resulted in violation of principles of natural justice.

8. The learned Senior Counsel for the petitioner would submit that pursuant to order of this Court, a personal hearing before the respondent through Video Conferencing was held merely for eight minutes and that the officer logged out without properly conducting the personal hearing.

9. The learned Senior Panel Counsel for the respondent countered the arguments of the learned Senior Counsel for the petitioner by producing the video recording of the personal hearing.

10. I have considered the arguments advanced by the learned Senior Counsel for the petitioner and the learned Senior Panel Counsel for the respondent.

11. The submission of the petitioner touching on merits of the case is regarding the accounting practice adopted in their book of accounts, cannot be examined under Article 226 of the Constitution of India. The jurisdiction of this Court cannot be invoked to circumvent the alternate remedy before the Appellate Commissioner as the petitioner has an alternate remedy against the impugned Assessment Order.

12. The only ground on which the impugned Assessment Order can be interfered only if there was a violation of principles of natural justice. The authorized representative of the petitioner has made submission and had requested for uploading the written submission. The learned Senior Panel Counsel for the respondent has shown a video recording of the personal hearing held.

13. The argument that there was violation of principles of natural justice as the personal hearing lasted only for eight minutes was thus demonstrated to be incorrect.

14. The video recording of the personal hearing also indicates that the petitioner's Chartered Accountant was heard patiently and the petitioner's Chartered Accountant requested time for uploading the written submissions which was also later uploaded by the Chartered Accountant on 16.01.2023. Therefore, the arguments advanced on behalf of the petitioner that there was violation of principles of natural justice cannot be countenanced. Therefore, the impugned Assessment Order passed by the respondent does not warrant interference.

15. Therefore, these Writ Petitions are liable to be dismissed and are accordingly dismissed. However, liberty is given to the petitioner to file a statutory appeal against the impugned Assessment Orders before the Appellate Authority within a period of thirty days from the date of receipt of a copy of this order. Consequently, connected Writ Miscellaneous Petitions are closed.

13.12.2023

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

Neutral Citation: Yes/No
arb

To

Assessment Unit,
Income Tax Department,
Ministry of Finance,
Government of India.

C.SARAVANAN, J.

arb

Pre-delivery Order in
W.P.Nos.13871 and 9005 of 2023

13.12.2023