IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 12.10.2023

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THE HON'BLE Mr. JUSTICE KRISHNAN RAMASAMY

W.P.No.14986 of 2022
and WMP No.14206 of 2022

M/s.Fomra Developers,
No.250, Govindappa Street,
George Town, Chennai 600 001 ... Petitioner

Vs.

1. Additional Commissioner of Income Tax
   Non-Corporate Circle XI
   No.121, Mahatma Gandhi Road,
   Nungambakkam, Chennai 600 034

2. Chief Commissioner of Income Tax,
   Chennai – 1,
   121, Mahatma Gandhi Road,
   Chennai ... Respondents

Prayer:

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari to call for the records on the file of the 2nd respondent passing the impugned order dated 01.04.2022 in ITBA/COM/F/17/2022/23/1042425280(1) on the file of the 2nd respondent.

For Petitioner : Mr.G.Asokapathy
for Pass Associates
For Respondent : Dr.B.Ramaswamy
Senior Standing counsel

ORDER

This writ petition has been filed challenging the impugned order passed by the 2nd respondent in ITBA/COM/F/17/2022/23/1042425280(1) dated 01.04.2022.

2. The case of the petitioner is that it is a Partnership Firm engaged in the business of property development and other financial intermediation services. The petitioner filed the Income tax return for the assessment year 2017 -2018 in time and thereafter, they received a communication with regard to default on 13.07.2018. The respondent received a communication by virtue of the web portal. There is no dispute with regard to the receipt of communication with regard to the rectification of the defect on 13.07.2018. The time limit was granted to rectify the defect was up to 31st March 2019. However, to the shock and surprise of the petitioner the web portal was closed on 1st March 2019,

despite the fact that the time available to rectify the defect pointed out under Section 139(9) was available until 31st March 2019. Left with no other option, the petitioner made a representation to the 1st respondent vide letter dated 13.06.2019, explaining the circumstances which prevented the petitioner from rectifying the defect detailed in 139(9) notice. However, the said representation did not evoke any response. The petitioner waited for 3 months and approached the 2nd respondent under Section 119 (2) (b) of the Act, vide petition dated 05.09.2019. Further, the petitioner filed a condone delay petition to rectify the defect under Section 119(2) (b) of the Act. The 2nd respondent vide its order dated 01.04.2022 , had rejected the petition for delay in filing the rectification of return of income under Section 119(2) (b) of the Act on the ground that the delay has not been properly explained or established. Aggrieved by the said rejection order, the present writ petition has been filed before this Court.

3. The learned counsel appearing for the petitioner submitted that though the time limit fixed to rectify the defect pointed out by CPC

under section 139(9) was available until 31st March 2019, the web portal was closed on 1st March 2019 and therefore, the petitioner was unable to rectify the defects.

4. Per contra, Dr.B.Ramaswamy, learned Senior Standing counsel, appearing on behalf of respondent submitted that the petitioner did not provide genuine reasons to condone the delay and therefore, he was not permitted to rectify the defect by filing the audit report.

5. This Court has carefully considered the submissions made on either side and the materials available on record.

6. Upon considering the submissions of the learned counsel for the petitioner and the respondent, the time limit fixed to rectify the defect and to upload the audit report under Section 139(9), was available until 31st March 2019. The web portal was closed before the time limit fixed, thus the petitioner could not rectify the defect. Certainly, the petitioner is entitled to file the audit report up to 31.03.2019, as per communication

dated 13.07.2018 and without assigning any reason by the department, the web portal was closed on 1st March 2019. Therefore, this Court feels that the reason assigned by the petitioner in not uploading the audit report before the time limit appears to be genuine which aspect was not considered by the authority below and hence, this Court is inclined to condone the delay in filing the audit report and accordingly, the delay is condoned and the impugned order is set-aside. The petitioner is permitted to rectify the defect by filing the audit report within 15 days from the date of receipt of the copy of this order and the respondent shall facilitate to open the web portal to enable the petitioner to file their audit report. It is for the Department to deal with the audit report in accordance with law.

7. This writ petition is disposed of accordingly. Consequently, the connected miscellaneous petition is a also closed.

12.10.2023

Speaking/Non-speaking order
Index : Yes / No

Neutral Citation : Yes / No
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KRISHNAN RAMASAMY.J.,

rka

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