IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 24.11.2023

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THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P. No.21044 of 2021
and W.M.P. Nos. 22297 and 22300 of 2021

Baashyam Constructions Pvt. Ltd.,
Rep. by its Director Mr.Yuvaraajann ...Petitioner

v.

1.Additional/ Joint/ Deputy/ Asst. Commissioner of Income Tax/
Income Tax Officer, National Faceless Assessment Circle,
Income Tax Department, Ministry of Finance,
Room No.401, 2nd Floor, E-Ramp,
Jawaharlal Nehru Stadium, Delhi-110 003.

2.Assistant Commissioner of Income Tax,
Corporate Circle, 1(2),
No.121, M.G.Road, Nungambakkam,
Chennai-600 034. ...Respondents

Prayer: Writ petition filed under Article 226 of the Constitution of India praying to issue a writ of Certiorarified Mandamus calling for the record of the 1st Respondent herein in impugned order No.DIN:ITBA/AST/143(3)/2021-22/1035544833(1) dated 14.09.2021 passed by the 1st Respondent for the assessment year 2018-19 and quash the order dated 14.09.2021passed and consequently direct the 1st Respondent to hear the assessment proceedings in PAN No.AACCB4376P for AY 2018-19 afresh by giving opportunity to the petitioner.

For Petitioner : Mr.V.S.Jayakumar
Senior Advocate
for Ms.G.Vardini Karthik
For Respondents : Mr.D.Prabhu Mukunth Arunkumar
Standing Counsel

ORDER

The present writ petition is filed challenging the order dated 14.09.2021 on the limited ground that the same is passed in gross violation of principles of natural justice.

2. It is submitted by the learned counsel for the petitioner that a notice was issued close to mid night on 10.09.2021 requiring the petitioner to respond on 13.09.2021. It is submitted by the learned senior advocate appearing for the petitioner that 10.09.2021 was a public holiday and the following two days were Saturday and Sunday. On 13.09.2021 the petitioner requested for extension of time to comply/ respond to the said notice dated 10.09.2021. However, without even dealing with the petitioner's request for extention of time the impugned order was passed on 14.09.2021. It was submitted that the impugned order stands vitiated for non consideration of the petitioner's request for adjournment/extension of time. The impugned order is made in undue haste and the opportunity afforded was not real.

3. To the contrary, it is submitted by the learned counsel for the Respondent that there is an effective alternative remedy and further the notice is only a continuation of the earlier notice and there is nothing new

thus the plea of violation of principles of natural justice is unjustified.

4. Heard both sides. Perused the materials on record.

5. I find that the impugned order suffers from more than one infirmity. Once, a request for adjournment is made, though may not be an absolute right for adjournment however the assessing officer has a duty to deal with such request and to either accept or refuse depending on the facts of each case. In this regard it may be relevant to refer to the following judgment:

S.K. Gupta v. CST, 1985 (1986) 61 STC 20 at page 22

> ***6. ....****. It is correct that the party had no absolute right to get an adjournment. The party, however, did have a right to have his application considered...*

5.1. However, in the instant case there is non-consideration of the request for extension of time/adjournment thereby vitiating the impugned proceedings.

6. I also find that the impugned proceedings has been made with undue haste. It is trite law that haste tends to arbitrariness and any

proceeding which suffers from vice of arbitrariness would fall foul of Article 14 of the Constitution of India and would stand vitiated, it was held by the Hon'ble Supreme Court in the case of ***East Coast Railway v. Mahadev Appa Rao, reported in (2010) 7 SCC 678,*** which reads as under:

> *"23. Arbitrariness in the making of an order by an authority can manifest itself in different forms. Non-application of mind by the authority making the order is only one of them. Every order passed by a public authority must disclose due and proper application of mind by the person making the order. This may be evident from the order itself or the record contemporaneously maintained. Application of mind is best demonstrated by disclosure of mind by the authority making the order. And disclosure is best done by recording the reasons that led the authority to pass the order in question. Absence of reasons either in the order passed by the authority or in the record contemporaneously maintained is clearly suggestive of the order being arbitrary hence legally unsustainable."*

6.1. It may also be relevant to refer to the judgment of the Hon'ble Supreme Court in the case of **Zenith Metaplast (P) Ltd. v. State of Maharashtra,** reported in **(2009) 10 SCC 388,** wherein it was held as under:

> *"39. Anything done in undue haste can also be termed as arbitrary and cannot be condoned in law (vide M.P. Hasta Shilpa Vikas Nigam Ltd. v. Devendra Kumar Jain [(1995) 1 SCC 638 : 1995 SCC (L&S) 364 : (1995) 29 ATC 159] and Bahadursinh Lakhubhai Gohil v. Jagdishbhai M.*

Kamalia [(2004) 2 SCC 65 : AIR 2004 SC 1159])."

7. The learned counsel for the Respondents would also submit that the time spent in the writ petition ought to be excluded while reckoning the period of limitation. The learned counsel for the petitioner would also fairly concede to the above request. It was further submitted by the learned counsel for the Respondent that the present impugned order may be treated as show cause notice and the petitioner may respond to it by submitting its reply on or before 20.12.2023.

8. I am inclined to set aside the impugned order, however it is open to the Respondent to complete the assessment in accordance with law, after affording the petitioner a reasonable opportunity. The writ petition stands disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

24.11.2023

Speaking (or) Non-Speaking Order
Index: Yes/No
Neutral Citation: Yes/No
mka

To:

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MOHAMMED SHAFFIQ, J.

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