IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.08.2023

CORAM :

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.No.23923 of 2021
and
W.M.P.Nos.25253, 25254 of 2021 and W.M.P.No.194 of 2022

Resplenda Expressions Private Limited
Represented by its Director,
Akshat Jain,
Erstwhile Office at
No.5, First Main Road, CIT Colony,
Flat 4A, 4th Floor, Shakthi Krishna,
Mylapore, Chennai – 600 004.
Currently Having Office at
No.138, Luz Church Road, Mylapore,
Chennai – 600 004. ... Petitioner

Vs.

1.The Central Board of Direct Taxes,
Represented by its Chairperson,
Department of Revenue – Ministry of Finance,
Government of India,
New Delhi.

2.The Additional/Joint/Deputy/Assistant Commissioner
of Income Tax/Income Tax Officer,
National e-assessment Centre,
New Delhi.

3.The Income Tax Officer,
Corporate Ward – 5(4),
No.121, Mahatma Gandhi Road,
Nungambakkam, Chennai – 34. ... Respondents

Prayer: Writ Petition filed under Article 226 of Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus, to call for the records on the file of the second respondent and quash the impugned order in ITBA/AST/S/147/2021-2022/1035104289(1) dated 26.08.2021 passed by the second respondent as illegal and consequently direct the second respondent to complete the fresh assessment for the assessment year 2011-2012 after granting reasonable/sufficient opportunity of hearing.

For Petitioner : Mr.Gautham Venkata Narayanan
for Mr.R.Sivaraman

For Respondents : Dr.B.Ramaswamy
Senior Standing Counsel

ORDER

The impugned Assessment Order bearing DIN:ITBA/AST/S/147/2021-2022/1035104289(1) dated 26.08.2021 has been passed by the second respondent pursuant to a Remand Order passed by the Income Tax Appellate Tribunal (ITAT) in ITA.No.1364/Chny/19 for the Assessment Year 2011-2012.

2. The Income Tax Appellate Tribunal had passed the above order on 04.11.2019 following its earlier order dated 25.07.2019 wherein, the Assessment Orders passed for the Assessment Years 2008-2009 and 2009-2010 were set aside the by the ITAT by its order dated 01.08.2019.

3. The Income Tax Appellate Tribunal had directed the Assessing Officer to re-examine the matter after furnishing copies of the investigation report which is said to have been received from the Investigation Wing/Investigation Department at Mumbai and thereafter, decide the issue afresh in accordance with law, after giving a reasonable opportunity to the petitioner/assessee.

4. The same order was followed as far as the Assessment Year 2011-2012 is concerned. Pursuant to the aforesaid order dated 04.11.2019 in ITA.No.1364/Chny/19 along with ITA.No.1363/Chny/2019 for the Assessment Year 2010-2011, series of communications and notices were exchanged between the petitioner and the respondents.

5. Part of the proceedings were under the erstwhile E-Assessment Scheme-2019 and partly under the provisions of Section 144B of the Income Tax Act, 1961 as inserted with effect from 01.04.2021.

6. The petitioner has been issued with notices asking the petitioner to furnish documents, which appears to have been complied by the petitioner in part.

7. The petitioner has also been issued with detailed Show Cause Notices dated 29.07.2021 and 10.08.2021. The petitioner has also responded to the same and requested for hearing through video conferencing and for cross-examination of Rajendra Sohanlal Jain, Sanjay Choudhary and Sri Dharamchand Jain, whose statements were relied upon by the respondents Income Tax Department to conclude that the petitioner and the said Rajendra Sohanlal Jain and his company were engaged in penny stock transactions.

8. The impugned Assessment Order has been passed without giving the petitioner an opportunity of hearing through video conferencing and the opportunity of cross-examining the said Rajendra Sohanlal Jain.

9. If the Department wants to rely on the Statement recorded from Rajendra Sohanlal Jain Group, Sanjay Choudharay Group and Sri Dharamchand Jain Group from whom, statements were obtained, it is incumbent on the part of the Department to have allowed the petitioner to cross-examine the witnesses whose statement were recorded.

10. Although the petitioner has not filed all the documents that were required for completing the assessment, pursuant to the Remand Order dated 24.10.2019/04.11.2019, Court is of the view that the impugned Assessment Order dated 26.08.2021 cannot be sustained as it has been passed after denying the petitioner an opportunity of hearing through video conferencing and an opportunity to cross-examine the witnesses whose statements were recorded by the Department and relied upon.

11. Under these circumstances, the impugned Assessment Order is set aside and the case is remitted back to the second respondent to pass a fresh order on merits and in accordance with law after allowing the petitioner to cross-examine the said Rajendra Sohanlal Jain, Sanjay Choudhary and Sri Dharamchand Jain and after giving the petitioner an opportunity of hearing through Video Conferencing as available under the provisions of Section 144B of the Income Tax Act, 1961 during the relevant period.

12. The petitioner shall however file all the documents that are required for completing the assessment, within a period of thirty days from the date of receipt of a copy of this order.

13. The respondents are directed to make suitable arrangements in the web portal for the petitioner to upload the information which, the petitioner has not furnished so far. The petitioner shall cooperate with the respondents in the re-assessment proceeding. In case, there is difficulty in producing the witness, the assessment shall be completed without relying upon the statement of the witness.

14. The entire exercise shall be completed by the second respondent preferably within a period of six months from the date of receipt of a copy of this order.

15. This Writ Petition is allowed with the above observations. No costs. Consequently, connected Writ Miscellaneous Petitions are closed.

29.08.2023
(1/2)

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

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To

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Represented by its Chairperson,
Department of Revenue – Ministry of Finance,
Government of India,
New Delhi.

2.The Additional/Joint/Deputy/Assistant Commissioner
of Income Tax/Income Tax Officer,
National e-assessment Centre,
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<u>C.SARAVANAN, J.</u>

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