**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

**DATED : 03.11.2023**

**CORAM**

**THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ**

**W.P. No.24043 of 2021**
**and**
**W.M.P. Nos.25368, 25369 and 25370 of 2021**

Gnansekar Arunachalam ..Petitioner

Vs.

1.The Deputy Commissioner of Income Tax,
Central Circle - 3(4),
Income Tax Department,
46, Mahatma Gandhi Road,
Chennai-600 034.

2.The Principal Commissioner of Income Tax-1,
Income Tax Department,
46, Mahatma Gandhi Road,
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 records of the writ petitioner on the file of the 1st Respondent to quash the impugned order dated 29.09.2021 passed under Section 143(3) of the Income Tax Act, 1961 for the assessment year 2019-20 in ITBA/AST/S/143(3)/2021-22/1036034631(1) and consequently direct the 1st Respondent to complete the fresh assessment for the assessment year 2019-20 after granting reasonable/ sufficient opportunity of hearing.

For Petitioner : Mr.A.S.Sriraman

For Respondents : Mr.A.P.Srinivas
Senior Standing Counsel

**ORDER**

The impugned order is challenged on the limited ground that the same has been made without granting adequate opportunity to the petitioner. There was a survey and operation on 07.02.2019 under Section 133 A of the Income Tax Act, 1961 (hereinafter referred to as "the Act") of the petitioner's place of business. The petitioner who is an individual has filed his return of income of Rs.22,45,620/- on 29.11.2019. The return of income was taken up for compulsory scrutiny by issuance of notice dated 29.08.2020 under Section 143(2) of the Act. A notice under Section 142(1) of the Act was issued on 17.03.2021 by the 1st respondent calling for various details to be produced by the petitioner on or before 25.03.2021. Thereafter, a show cause notice dated 18.09.2021 was issued calling upon the petitioner to submit evidence on or before 23.09.2021. The impugned order of assessment was made on 29.09.2021 while recording that the petitioner had not complied with the notice under Section 142(1) of the Act dated 17.03.2021 and the notice issued on 18.09.2021. In view of the fact that the petitoner had not responded to any of the above notices, the impugned order came to be passed.

2. The learned counsel for the petitioner would submit that all these notices

were issued by E-mail between February, 2021 to September, 2021. During the said period, the entire nation was engulfed by a steep rise in Covid 19 and the movements were regulated. Resultantly, they had limited access to the office and was working with limited/ skeletal staff. The petitioner was unable to check the E-mail and in any view gathering and furnishing the requisite documents was extremely difficult if not impossible. Further the very fact that a series of notices were issued at very short intervals would also reveal that the entire proceeding was carried out in undue haste.

3. To the contrary, it was submitted by the learned counsel for the respondent that the petitioner has an effective alternative remedy by way of appeal and thus the writ petition ought not to be entertained.

4. This Court is conscious of the fact that writ petition under Article 226 of the Constitution of India would not be entertained normally if statutory remedy is available. However, existence of alternate remedy is not an embargo or an absolute bar to exercise power under Article 226 of the Constitution of India but a self-imposed restriction and the following circumstances viz., violation of principles of natural justice or lack of jurisdiction or error apparent on the face of the record

are some of the exceptions carved out to the rule of alternate remedy for exercise of discretion under Article 226 of the Constitution of India.

5. This Court is of the view that outbreak of Covid pandemic in March 2020 followed by a steep surge periodically caused great hardship and affected normal life of everyone including the litigants. It is in view of the adversity faced by the litigants, the Hon'ble Supreme Court through a series of orders extended the period of limitation. Importantly, vide order dated 10.01.2022 it was directed that wherever limitation for any suit, appeal, application or proceeding would have expired during the period 15.03.2020 to 28.02.2022 the limitation was extended by a period of 90 days from 01.03.2022 where the available period was less than 90 days. I had only referred to the above orders to indicate the magnitude of the difficulty faced by everyone in all walks of life. Viewed from the above perspective, I am inclined to accede to the request made by the petitioner for one final opportunity to putforth his case. In view thereof the petitioner is permitted to appear before the respondent on or before 15.12.2023 along with relevant documentary evidence. The petitioner shall be granted an opportunity of hearing on 15.12.2023 or on any other date that may be fixed by the Respondent depending on the issues involved and orders shall be passed after taking into

account the objections / documents that may be filed in accordance with law. Failure to appear on 15.12.2023 would result in restoration of the impugned order.

6. With the above directions, the writ petition stands disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

**03.11.2023**

Speaking (or) Non Speaking Order
Index:Yes/No
Neutral Citation: Yes/No
Spp/ Mka

To:
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Chennai-600 034.

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46, Mahatma Gandhi Road,
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**MOHAMMED SHAFFIQ, J.**

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