IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.09.2023

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THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P. No.25049 of 2021
and
W.M.P. Nos. 26387 and 26386 of 2021

Nitesh Jain Mangal Chand ... Petitioner

Vs.

1.Additional / Joint/ Deputy/ Assistant Commissioner/
Income Tax Officer, Income Tax Department,
National Faceless Assessment Centre,
New Delhi.

2.Income Tax Officer,
Office of the Joint/ Additional Commissioner of Income Tax,
Ward 1, Hosur Range,
737/1. 1st Floor, RK Towers, Maruthi Nagar,
Hosur- 635 109.

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari calling for the records of the 1st Respondent in the assessment order for the assessment year 2018-19 bearing DIN-ITBA/AST/S/143(3)/2021-22/1035886673(1) dated 25.09.2021 and quash the same.

For Petitioner : Mr.P.Jitendra Kumar

For Respondents : Mr.S.Premalatha
Government Advocate

ORDER

The writ petition is filed praying for a Writ of Certiorari calling for the records of the 1st Respondent in the assessment order for the assessment year 2018-19 bearing DIN-ITBA/AST/S/143(3)/2021-22/1035886673(1) dated 25.09.2021 and quash the same.

2. The petitioner is an individual and proprietor of M/s.Maa Osiya Corporation at Hosur, Tamil Nadu, engaged in the business of manufacturing and supply of aluminium frames, UPVC windows/ shutters etc. The petitioner filed his income tax returns for the assessment year 2018-19 vide Acknowledgement No.459040751310319 on 31.03.2019, which was selected for scrutiny vide notice dated 22.09.2019 under Section 143(2) of the Income Tax Act, 1961 (hereinafter referred to as "the Act") in respect of the following issues viz., business purchases and non-furnishing of quantitative details and business expenses.

3. On 25.09.2021, the 1st Respondent issued the impugned order, which is challenged on the limited ground that the order has been made in violation of principles of natural justice. Admittedly, a notice was issued on 22.09.2021 calling upon the petitioner to submit its response on or before 24.09.2021. The petitioner in response to the above notice filed its request on 24.09.2021 seeking adjournment upto 29.09.2021 wherein it was stated that the time granted for reply being only 48 hours, is inadequate. However, the assessing authority proceeded to complete the assessment without even dealing with the request which was made by the petitioner. Instead, the assessing authority proceeds to record that no reply has been received.

4. It is submitted by the learned counsel for the petitioner that without dealing with the petitioner's request or informing the petitioner as to whether adjournment request was accepted or rejected, the assessing authority proceeded to make the order of assessment. It was thus submitted that the order suffers from violation of principles of natural justice.

5. To the contrary, it is submitted by the learned counsel for the Respondents that the petitioner has been granted several opportunities and the case of the petitioner that they have been handicapped in view of seizure of documents/ books/ accounts by the GST Department is factually incorrect nor supported by any documentary evidence. It is further submitted that the Respondent had proceeded to pass the impugned order only after giving the petitioner adequate opportunity and in this regard they sought to place reliance on the Table extracted at Page 3 of the counter, wherein various communications/ orders / notices exchanged between the department and the assessee has been referred to. The learned counsel for the Respondents would submit that though the petitioner was called upon to put forth their contentions with supporting documents on several occasions, the petitioner had not availed those opportunities. In view of the petitioner's inaction, the respondent had proceeded to complete the assessment. It is the further submission that though the petitioner would submit that a request for adjournment was made on 24.09.2021, however the order sheet would indicate that no such request was made.

6. On perusal of records, this Court finds that a request for adjournment to the notice dated 22.09.2021 was in fact submitted as evident from the screenshot of the Web portal of the respondent Department. The impugned order and the counter proceeds on an erroneous factual premise that the petitioner did not respond to the notice dated 22.09.2021. The revenue has not questioned the genuineness of the screenshot kept at Page Nos.111 to 113 of the typed set, which would evidence the petitioner's request for adjournment. I would think that there is merit in the submission of the learned counsel for the petitioner that the order is made on non-consideration of the petitioner's request for adjournment and thus suffers from violation of principles of natural justice.

7. In view of the same, the impugned order is set aside and the matter is remanded back to the 1st Respondent to pass fresh orders after affording the petitioner with a reasonable opportunity of hearing on merits and in accordance with law within a period of 4 months from the date of receipt of a copy of this order.

8. The writ petition stands disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

04.09.2023

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

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Income Tax Officer, Income Tax Department,
National Faceless Assessment Centre,
New Delhi.

2.Income Tax Officer,
Office of the Joint/ Additional Commissioner of Income Tax,
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MOHAMMED SHAFFIQ, J.

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