IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.08.2023

CORAM

THE HONOURABLE **MR.JUSTICE C.SARAVANAN**

W.P.No.25812 of 2022
and
W.M.P.Nos.24868 & 24871 of 2022

Shri Renga Fabricators Private Limited,
Represented by its Managing Director,
Mr.P.B.S.ESA GHUGHA ... Petitioner

Vs

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

2. The Income Tax Officer,
 Corporation Ward 6(2),
 Wanaparthy Block,
 No.121, Mahatma Gandhi Road,
 Nungambakkam,
 Chennai – 600 034.

3. The Additional/Joint Commissioner of Income Tax,
   Corporate Range – 3, Room No.424,
   Wanaparthy Block, (New Block),
   Aaayakar Bhavan 4th Floor,
   121, MG Road,
   Chennai – 600 034. ... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorari, to call for the records in DIN:ITBA/AST/S/147/2021-2022/1041745769(1) dated 27.03.2022 on the file of the first respondent relating to the Assessment Year 2015-2016 and quash the same.

For Petitioner : Mr.K.Sandeep Bagmar

For Respondents : Mr.R.S.Balaji

ORDER

The petitioner is aggrieved by the Impugned Assessment Order dated 27.03.2022 bearing reference DIN ITBA/AST/S/147/2021-2022/1041745769(1). The Impugned Order precedes a notice under Section 148 of the Income Tax Act, 1961 dated 30.03.2021. The said notice was issued to the petitioner as the petitioner had failed to file a regular returns for the Assessment Year 2015-2016.

2. However, the said notice was transmitted to one of the other designated E-mail ID of the petitioner at esai@vsnl.com which was no longer in use as Bharat Sanchar Nigam Limited (hereinafter referred to as BSNL) had stopped providing IT Service from April 2019, although the petitioner also had an alternate E-mail ID at esaiandco@gmail.com.

3. The specific case of the petitioner is that notices that were issued subsequently were also sent to the same E-mail ID.

4. The learned counsel for the petitioner therefore submits that none of the communications starting from the issuance of Section 148 of the Income Tax Act, 1961 dated 30.03.2021 was received by the petitioner.

5. The learned counsel for the petitioner further submits that the petitioner came to know about the passing of the Impugned Order only after a notice under Section 274 read with Section 271(1)(c) of the Income Tax Act, 1961 was sent to the petitioner's Chartered Accountant and petitioner's alternate E-mail ID at esaiandco@gmail.com.

6. It is under these circumstances the petitioner has challenged the Impugned Order. It is therefore submitted that the Impugned Order is liable to be set aside.

7. The learned Senior Standing Counsel for the respondents on the other hand would submit that even if the notice was not sent to the petitioner's E-mail ID, the notice and the communication were posted in the web portal and nothing precluded the petitioner from downloading the same and participate in the proceedings which ultimately culminated in the Impugned Order dated 27.03.2022.

8. The learned Senior Standing Counsel for the respondents submits that the petitioner has also not complied with the requirements of the decision of the Hon'ble Supreme Court in Hon'ble Supreme Court in **GKN Driveshafts (India) Limited Vs. Income Tax Officer and Ors** [2003] 259 ITR 19 (SC) by filing returns and filing objection to the reopening of the assessment. Hence, he submits that the present writ petition is liable to be dismissed.

9. I have considered the arguments advanced by the learned counsel for the petitioner and the learned Senior Standing Counsel for the respondents.

10. Clearly the Impugned Order dated 27.03.2022 is unsustainable as the notice which preceded the Impugned Order have been sent to the E-Mail ID which was no longer in use as BSNL has stopped providing services from April 2019.

11. Considering the above, the Impugned Order dated 27.03.2022 is set aside and the case is remitted back to the respondents to issue a proper notice under Section 148A(b) of the Income Tax Act, 1961. In view of the above, the consequential penalty notice issued under Section 271(1)(c) of the Act on 03.08.2022 & 04.08.2022 is also stands quashed. The respondents shall pass order under Section 148A(d) of the Income Tax Act, 1961 within a period of twelve (12) months from the date of receipt of a copy of this order.

12. The writ petition stands allowed with the above observations and directions. No costs. Consequently, connected miscellaneous petitions are closed.

29.08.2023

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

To

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

2. The Income Tax Officer,
   Corporation Ward 6(2),
   Wanaparthy Block,
   No.121, Mahatma Gandhi Road,
   Nungambakkam,
   Chennai – 600 034.

3. The Additional/Joint Commissioner of Income Tax,
   Corporate Range – 3, Room No.424,
   Wanaparthy Block, (New Block),
   Aaayakar Bhavan 4th Floor,
   121, MG Road,
   Chennai – 600 034.

C.SARAVANAN, J.

rgm

W.P.No.25812 of 2022
and
W.M.P.Nos.24868 & 24871 of 2022

29.08.2023