IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 10.11.2023

CORAM

THE HON'BLE Mr. JUSTICE KRISHNAN RAMASAMY

W.P.Nos.26322 of 2023

M/s.Northern Arc Investment Managers Private Limited,
Phase I, 10th Floor IITM Research Park,
Taramani, Kanagam Village,
Chennai 600 113, Tamil Nadu,
Rep by its Chief Financial Officer,
Mr.Vishal Garg
[PAN:AACCI0979B]

... Petitioner

Vs.

1.The Deputy Director of Income Tax,
Centralised Processing Centre-ITR,
1st Floor, Prestige Alpha No.48/1 & 48/2,
Beratenaagrahara Begur, Hosur Road,
Uttarahalli Hobli, Bengaluru,
Karnataka 560 100

2.The Assessing Officer,
National Faceless Assessment Centre,
New Delhi

3.The Deputy Commissioner of Income Tax,
Corporate Circle 4(1),
No.121, Mahatma Gandhi Road,
Nungambakkam, Chennai 600 034.

... Respondents

Prayer:

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus, to direct the 1st respondent or the 2nd respondent to permit the petitioner file its Rectification petition to rectify the mistake of double dis-allowance in the intimation under Section 143(1) of the Act dated 29.07.2023 and process the refunds within such reasonable time as this Court may think appropriate.

For Petitioner : Mr.S.P.Chidambaram

For Respondent : Mr.V.Mahalingam,
Senior Standing counsel

ORDER

This writ petition has been filed to direct either the 1st respondent or the 2nd respondent to permit the petitioner to file their Rectification petition to rectify the mistake of double dis-allowance in the intimation dated 29.07.2023 and also to process the refunds.

2. The learned counsel for the petitioner would submit that the intimation dated 01.03.2023 was issued by the 1st respondent notifying some discrepancies in the entries made in the records of the petitioner. Subsequent to the same, the petitioner had filed their reply dated 13.03.2023. However, without considering the said reply, the impugned intimation dated 29.07.2023 was issued by the respondent. Further, it appears that prior to the issuance of the said impugned intimation, the respondent had initiated the scrutiny proceedings by virtue of notice dated 01.06.2023.

3. The contention of the petitioner is that if the scrutiny is initiated, it will be unknown as to whether the respondent took the stand of the petitioner as stated in the ITR filed by the petitioner or as stated in the reply of the petitioner. Thus, he would submit that the interest of the petitioner will get affected. Hence, this writ petition.

4. In reply, by referring the paragraph No.22 of the counter affidavit, the learned counsel for the respondent would submit that

though the respondent had not considered the reply filed by the petitioner, the said reply will be considered at the time of scrutiny by the Faceless Assessment Officers in accordance with law. Therefore, he would submit that it is not that if an order is issued by the respondent, the same will only be followed by the Faceless Assessment Officer.

5. I have given due consideration to the submissions made by the learned counsel for the petitioner and the respondent and also perused the materials available on record.

6. In the present case, the intimation under Section 143(1) of the Act has been issued by the respondent on 01.03.2023 by intimating some discrepancies to the petitioner. Section 143(1) of the Act reads as follows:

> *“**143. Assessment.—***
>
> *(1) Where a return has been made under section 139, or in response to a notice under sub-section (1) of section 142, such return shall be processed in the following manner, namely:—*

(a) the total income or loss shall be computed after making the following adjustments, namely:—

(i) any arithmetical error in the return;

(ii) any incorrect claim, if such incorrect claim is apparent from any information in the return;

(iii) disallowance of loss claimed, if return of the previous year for which set off of loss is claimed was furnished beyond the due date specified under sub-section (1) of section 139;

(iv) disallowance of expenditure indicated in the audit report but not taken into account in computing the total income in the return;

(v) disallowance of deduction claimed under sections 10AA, 80-IA, 80-IAB, 80-IB, 80-IC, 80-ID or section 80-IE, if the return is furnished beyond the due date specified under sub-section (1) of section 139; or

(vi) addition of income appearing in Form 26AS or Form 16A or Form 16 which has not been included in computing the total income in the return:

(b) the tax 2 [, interest and fee], if any, shall be computed on the basis of the total income computed under clause (a);

(c) the sum payable by, or the amount of refund due to, the assessee shall be determined after adjustment of the tax 2 [, interest and fee], if any, computed under clause (b) by any tax deducted at source, any tax

collected at source, any advance tax paid, any relief allowable under an agreement under section 90 or section 90A, or any relief allowable under section 91, any rebate allowable under Part A of Chapter VIII, any tax paid on self-assessment and any amount paid otherwise by way of tax 3 [, interest or fee];

(d) an intimation shall be prepared or generated and sent to the assessee specifying the sum determined to be payable by, or the amount of refund due to, the assessee under clause (c); and

(e) the amount of refund due to the assessee in pursuance of the determination under clause (c) shall be granted to the assessee:"

7. A reading of the above Section makes it clear that if there is any corrections, errors, addition or reduction in the ITR of the Assessee, the Department has to intimate the same to the Assessee. In the present case, the respondent had intimated the error to the petitioner and also directed the petitioner to file his reply within a period of 30 days. Thereafter, as per the provisions of the Act, the respondent is supposed to have considered the said reply and make suitable modifications in the income

tax returns as requested by the petitioner. However, though the reply was filed by the petitioner, the respondent had not considered the said reply filed by the petitioner and issued the impugned intimation dated 29.07.2023.

8. Now, it was submitted by the learned counsel for the respondent that the reply filed by the petitioner will be considered at the time of scrutiny of ITR by the Faceless Assessment Officer, which means the Faceless Assessment Officer has to consider the reply and proceed the petitioner's case with double stands i.e., (1) based on the original returns filed by the petitioner; and (2) based on the modified returns after considering the reply of the petitioner, which would ultimately create unnecessary confusion.

9. In view of the above, since the learned counsel for the respondent had submitted that the reply, which was rejected by the respondent will be considered at the time of scrutiny and for the interest of justice, this Court is inclined to pass the following orders:

i) The respondents are directed to consider the reply filed by the petitioner dated 13.03.2023 and accept the returns accordingly.

ii) Thereafter, the Faceless Assessment Officer shall proceed further by providing the opportunity of hearing before passing orders in the scrutiny assessment.

10. With the above directions, this writ petition is disposed of. No costs.

10.11.2023

Speaking/Non-speaking order
Index : Yes / No
Neutral Citation : Yes / No
nsa

To

1.The Deputy Director of Income Tax,
Centralised Processing Centre-ITR,
1st Floor, Prestige Alpha No.48/1 & 48/2,
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KRISHNAN RAMASAMY.J.,

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