IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.09.2023

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.No.27184 of 2023
and
W.M.P.Nos.26620 and 26622 of 2023

Chinnaswamy Yuvaraj Sathyanarayanan ... Petitioner

Vs

1.Non-Corporate Circle 19(1),
Annexure Building 6th Floor,
121 M G Road, Nungambakkam,
Chennai – 600 034.

2.The Income Tax Department,
National Faceless Assessment,
(Assessment Unit),
Delhi. ... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorarified Mandamus, direction or any other appropriate writ to quash the impugned order dated 20.12.2022 baring ITBA/AST/S/144/2022-2023/1048120643(1) for A.Y.2021-2022 issued by the 1st respondent and consequently direct the 1st respondent to initiate fresh assessment proceeding and provide opportunity and then pass appropriate order.

For Petitioner : Mr.M.Velmurugan

For Respondents : Mrs.S.Premalatha
Junior Standing Counsel

ORDER

Mrs.S.Premalatha, learned Junior Standing Counsel takes notice on behalf of the respondents.

2. The petitioner has challenged the impugned Assessment order dated 20.12.2022. A reading of the impugned order indicates that the petitioner was issued with a notice dated 28.06.2022 under Section 143(2) of the Income Tax Act, 1961 followed by another notice dated 22.07.2022 under Section 142(1) of the Income Tax Act, 1961 and intimation by the second respondent stating that the Assessment will be conducted through faceless Assessment on 11.11.2022.

3.The petitioner was also issued with a Show Cause Notice dated 01.12.2022. The petitioner has also admitted in Paragraph 7 and 8 of the affidavit that although notices were sent to the petitioner in the registered E-mail ID/portal, the petitioner was unable to access the same. Post Covid – 19, the petitioner was unable to do business and most of the staffs of the petitioner had left the company and therefore the petitioner was unaware of the notice that preceeded in the impugned order. However, there is no clear explanation as to why the petitioner has filed this writ petition belatedly.

4.As per the decision of the Hon'ble Supreme Court in **Assistant Commissioner (CT) LTU, Kakinada and others** Vs. **Glaxo Smith Kline Consumer Health Care Limited**, 2020 SCC Online SC 440, the writ petition cannot be entertained beyond the statutory period for limitation and therefore writ petition is liable to be dismissed on account of lapse.

5.However, it is noticed that the impugned Assessment order has made a high pitch demand by concluding that the petitioner appears to have incurred a huge expenses of Rs.42,96,880/- in excess with the normal business expenses and in comparison with the turn over during the preceding Assessment order. Para 4.3 of the impugned order reads as under:-

"4.3. Despite issue and service of electronic communication from NaFAC, the assessee did not further any response. However, following the principal of natural justice show cause notice (SCN), dated 01.12.2022 was issued to the assessee which was duly served to the assessee in his registered account on the e-filing portal. Vide the said SCN, the assessee was duly communicated that though there is huge increase in turnover as compared to the preceding year (turnover for the year was reported at Rs.65,34,22,526/- compared to preceding year turnover of Rs.15,25,29,140) and sharp decline in gross profit ratio (gross profit ratio for the year was reported at 1.79% only compared to preceding year turnover of 5.76%), no detail/documentary evidence of whatsoever nature has been furnished by the assessee to substantiate such sharp decline in GP ratio despite high increase in turnover. **Therefore, considering the facts and circumstances of the case (emphasis on huge increase in turnover), the assessee was showcaused as to why GP ratio should not be computed at 10% and addition to the total income shall be made accordingly.**"

6.Therefore there is no merits in the writ petition. However, Court is inclined to give an opportunity to the petitioner to work out his remedy before the Appellate Authority under Section 250 of the Income Tax Act, 1961. The petitioner has also given liberty to apply for stay of all recovery proceedings.

7.The petitioner shall file a statutory appeal within a period of thirty days from the date of receipt of a copy of this order. The second respondent is directed to issue suitable directions to the administrators of the portal to enable the petitioner to upload the Appeal on web portal within such time. The petitioner shall independently file appropriate application for stay of all recovery proceedings before the second respondent within such time.

8.Considering the fact that the petitioner has facing a huge demand of Income Tax, there shall be a temporary reprive to the petitioner for a period of thirty days. The respondent shall keep all the recovery proceedings in abeyance for a period of thirty days from the date of receipt of a copy of this order.

9.This writ petition stands disposed of. No costs. Consequently, connected writ miscellaneous petitions are closed.

15.09.2023

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

To

1.Non-Corporate Circle 19(1),
Annexure Building 6th Floor,
121 M G Road, Nungambakkam,
Chennai – 600 034.

2.The Income Tax Department,
National Faceless Assessment,
(Assessment Unit),
Delhi.

C.SARAVANAN, J.

jas

W.P.No.27184 of 2023
and
W.M.P.Nos.26620 and 26622 of 2023

15.09.2023