IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.08.2023

CORAM :

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.No.30428 of 2022
and
W.M.P.Nos.29862 and 29863 of 2022

M/s.HIROTEC India Private Limited,
No.7/147, Powerhouse Road,
Keeranatham Post,
Saravanampatti, Coimbatore - 641 035
Represented by its Director
P.Senthilkumar ... Petitioner

Vs.

The Assessing Officer,
National Faceless Assessment Centre,
Assessment Unit,
Income Tax Department,
Ministry of Finance,
Delhi. ... Respondent

Prayer: Writ Petition filed under Article 226 of Constitution of India, praying for issuance of a Writ of Certiorari, to call for the records of the respondent and quash the impugned Assessment Order dated 21.09.2022 passed under Section 143(3) read with Section 144B of the Act for the Assessment Year

2020-2021 in PAN : AACCK5948E in DIN : ITBA/AST/S/143(3)/2022-2023/1045749202(1).

For Petitioner : Mr.S.P.Chidambaram

For Respondent : Mr.R.S.Balaji
Senior Standing Counsel and
Mrs.S.Premalatha
Junior Standing Counsel

ORDER

The petitioner is aggrieved by the impugned Assessment Order in DIN:ITBA/AST/S/143(3)/2022-2023/1045749202(1) dated 21.09.2022 passed under Section 143(3) read with Section 144B of the Income Tax Act, 1961 for the Assessment Year 2020-2021.

2. The impugned Assessment Order precedes a Show Cause Notice dated 05.09.2022. The petitioner was to respond to the Show Cause Notice by 09.09.2022 with a request for time.

3. The petitioner has also responded to the Show Cause Notice dated 05.09.2022 and has uploaded the reply belatedly on 19.09.2022. A further request was made by the petitioner on the same day for video conferencing,

which was also uploaded by the petitioner as is evident from the screenshot from the web portal indicating that the petitioner had successfully sent a request for video conferencing. However, the respondent has proceeded to pass the impugned order on 21.09.2022.

4. The petitioner has thus approached this Court almost immediately challenging the impugned Assessment Order stating that the impugned order has been passed gross violation of principles of natural justice.

5. That apart, the learned counsel for the petitioner would submit that even otherwise on merits also, there is no scope for upholding the demand. Hence, prays for allowing this writ petition.

6. The learned Senior Standing Counsel for the respondent on the other hand would submit that sufficient opportunity was given to the petitioner to reply to the Show Cause Notice relating to the Foreign Exchange Loss. However, the petitioner failed to give sufficient reasons for dropping the proposal in the aforesaid Show Cause Notice dated 05.09.2022.

7. The learned Senior Standing Counsel for the respondent has drawn attention to Paragraph 3 of the Counter Affidavit wherein, it has been stated that the case pertains to the disallowance of loss on foreign exchange. It is submitted that enquiry was made in this regard vide letter dated 18.07.2022 for the first time during the course of assessment proceedings. It is submitted that there is no compliance by the petitioner and that the reply that was given on 08.08.2022 was incomplete, despite sufficient time being given to the petitioner.

8. It is submitted that the petitioner had taken about 53 days in submitting an incomplete reply.

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

10. *Prima facie*, there are indications that the petitioner's reply dated 19.09.2022 has not been considered while passing the impugned order.

11. The petitioner had also successfully made a request for video conferencing on 19.09.2022. However, the impugned order has been passed with two days thereafter i.e., on 21.09.2022. Thus, there is a clear violation of principles of natural justice.

12. Considering the above, the impugned order is set aside and the case is remitted back to the respondent to pass a fresh order on merits and in accordance with law within a period of eight weeks from the date of receipt of a copy of this order after giving the petitioner an opportunity of being heard through video conferencing. The petitioner shall file a copy of reply dated 19.09.2022 before the date is fixed for a hearing through video conferencing.

13. This Writ Petition is disposed of with the above observations. No costs. Consequently, connected Writ Miscellaneous Petitions are closed.

28.08.2023

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

The Assessing Officer,
National Faceless Assessment Centre,
Assessment Unit,
Income Tax Department,
Ministry of Finance,
Delhi.

C.SARAVANAN, J.

arb

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