IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.11.2023
Coram

The Honourable **Mr.Justice Krishnan Ramasamy**

W.P.Nos.29031 of 2022
and
W.P.Nos.13051 and 13058 of 2023
and
W.M.P.Nos.28322 to 28325 of 2022, 12834 & 12839 of 2023

M/s. Great Akshaya Construction Limited
rep. By its Managing Director,
No.363, First South Main Road, Sri Kapaleeswara Nagar,
Neelankaarai, Chennai 600 041.

...Petitioner in all W.Ps.

Vs.

1. The Assessment Unit,
   Income Tax Department,
   National e-Assessment Centre, Delhi
   E-Ramp, Jawaharlal Nehru Stadium,
   Delhi – 110 003.

2. The Principal Commissioner of Income Tax -1,
   Chennai,
   Income Tax Department,
   No.121, Nungambakkam High Road,
   Chennai – 600 034. ...Respondents in all W.Ps.

Prayer in W.P.No.29031 of 2022

Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari to call for records of the writ petitioner Company on the file of the first respondent and to quash the impugned order dated 27.09.2022 passed under Section 143 (3) read with Section 144 B of the Act for the assessment year 2020-21 in DIN : ITBA/AST/S/143(3)/2022-23/1046022897(1).

Prayer in W.P.No.13051 of 2023

Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari to call for records of the writ petitioner Company on the file of the first respondent and to quash the impugned order dated 28.03.2023 passed under Section 270 A of the Act for the assessment year 2020-21 in DIN : ITBA/PNL/F/270A/2022-23/1051494800(1).

Prayer in W.P.No.13058 of 2023

Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari to call for records of the writ petitioner Company on the file of the first respondent and to quash the impugned order dated 28.03.2023 passed under Section 271AAC (1) of the Act for the assessment year 2020-21 in DIN : ITBA/PNL/F/271AAC(1)/2022-23/1051509436(1).

For Petitioners in all W.Ps. : Mr.A.S.Sriraman
For Respondent in all W.Ps. : Mr.B.Ramana Kumar
Senior Standing Counsel

COMMON ORDER

These Writ Petitions are filed challenging the impugned orders dated 27.09.2022 and 28.03.2023 respectively for the AY 2020-21 and 2022-23.

2. Mr.A.S.Sriraman, the learned counsel appearing for the petitioner would submit that the respondent, Income Tax Department issued show cause notices dated 12.09.2022 and 27.01.2023 and sought for reply from the petitioner through petitioner's registered e-filing account upto 16.09.2022, 01.02.2023 and 06.02.2023; that insofar as show cause notice dated 12.09.2022, the petitioner vide their reply, dated 15.09.2022, requested for 10 days for furnishing all the details as sought for the respondent-Department on account of the reason that their Accountant was sick, however, the respondent without granting sufficient time for filing the reply, passed the impugned order dated 27.09.2022.

2.1 The learned counsel further submitted that insofar as show cause notices dated 27.01.2023 issued in W.P.Nos.13051 and 13058 of 2023, the petitioner vide their e-response dated 31.01.2023, requested the respondent-Department to keep the penalty proceedings in abeyance in view of the interim order granted in Writ Petition No.29031 of 2022. However, the respondent vide communications dated 24.03.2023, stated that the interim order is with regard to penalty proceedings alone and not with respect to assessment proceedings and therefore, asked the petitioner to file reply or supporting documents before 27.03.2023 and the petitioner vide reply dated 27.03.2023 made a similar request to keep the present assessment proceedings in abeyance and in the event of continuing the penalty proceedings, to another opportunity for filing detailed submissions. However, the respondent without considering the said request, proceeded to confirm the proposals contained in the show cause notice and passed orders dated 28.03.2023 and the same are impugned in W.P.Nos.13051 and 13058 of 2023.

2.3 The learned counsel for the petitioner assailed the impugned order by contending that the respondent-Department has not granted sufficient time to the petitioner for filing reply and only a short period of time, i.e. 4/5 days was granted to the petitioner to file their reply/objections, which is not sufficient for the petitioner to file detailed reply and though a request was made by the petitioner in that regard, the respondent instead of considering such request, proceeded to pass the assessment orders and the same suffer from gross violation of principles of natural justice as the procedures contemplated under Section 144 B of the Income Tax Act has not been followed. Further, the learned counsel submitted that the petitioner, hoping that the request made by the petitioner (for providing further time for filing reply/objections to the show cause notices) would be considered, did not file the reply/objections within the time prescribed by the respondent-Department, however, when took steps to file the same, the same was ended in vain, since the assessment made is through faceless assessment mode, and as the time prescribed for filing reply was over, the e-portal was closed and hence, the petitioner has not been able to file reply. Therefore, learned counsel prayed for quashment of the impugned orders.

3. Mr.B.Ramana Kumar, the learned Senior Standing Counsel for the respondent-Department fairly admitted that the request made by the petitioner for extension of time to file reply was not considered by the respondent. Further, it is brought to the notice of the Court that e-portal would close, if the assessee fails to file reply within the time stipulated by the respondent-Department, and in the present cases, since the petitioner failed to file the reply within the time stipulated, e-portal application was closed and thereafter, the petitioner cant have no access over the same. Therefore, the learned Senior Standing Counsel would submit that any order may be passed and the same would be complied with by the respondent-Department in accordance with law.

4. Heard the learned counsel appearing for the petitioner and the learned Senior Standing Counsel for the respondents.

5. Insofar as W.P.No.29031 of 2022 is concerned, show cause notice was issued on 12.09.2022 to the petitioner calling for reply/objections from the petitioner within four days, i.e. on 16.09.2022, and though the petitioner vide their reply dated 15.09.2022 sought for further 10 days' time to file reply, the respondent proceeded to pass the impugned order confirming the proposals contained in the show cause notice. Similarly, in respect of W.P.No.13051 and 13058 of 2023, the respondent-Department vide show cause notices dated 27.01.2023, granted limited time to the petitioner for filing their reply/objections and the petitioner made similar request vide their replies dated 27.03.2023 for further time for filing detailed reply/objections and the petitioner swayed by a thought that the respondent-Department would consider their request did not file the reply/objection within the prescribed time, and when attempted to file the same, since the time fixed by the respondent-Department got expired and that since the assessment has been made through faceless assessment mode, the petitioner's e-portal application was closed and the petitioner can no longer have access over the same.

6. Further, in the present cases, it is seen that no opportunity of personal hearing was afforded to the petitioner before passing the impugned orders. Even in the absence of reply, proper officer ought to have provided an opportunity of personal hearing to the petitioner to make their submissions, but, in the present case, the said aspect was not considered and the impugned orders came to be passed without hearing the petitioner. The provisions of Section 144 B of the Income Tax Act clearly states that no directions, which are prejudicial to the assessee shall be issued before an opportunity is given to the assessee to be heard. In the present cases, in the show cause notices admittedly, there is no whisper with regard to provision of personal hearing to the petitioner and the opportunities that were stated to have been given are only empty formalities.

6.1 Therefore, this Court is inclined to set aside the impugned orders as unsustainable.

7. Accordingly, these three Writ Petitions are allowed, the impugned orders are set aside and this Court is inclined to pass the following orders:-

i) The respondent-Department is directed to open the webportal within three months from the date of receipt of a copy of this order and immediately after opening the e-portal, intimation may be sent to the petitioner through e-mail by providing atleast 15 days for uploading the reply through the web portal and on receipt of reply, shall fix a date for personal hearing for the petitioner through video conferencing with Faceless Assessment Officer and thereafter, the respondent is directed to pass a speaking order after considering the reply filed by the petitioner in accordance with law.

ii) Since these Writ Petitions have been filed challenging the assessment orders, the consequential penalty proceedings initiated against the petitioner pursuant to such impugned orders are also liable to be set aside and accordingly, the same are set aside.

iii) However, there shall be no order as to costs. Consequently, connected Miscellaneous Petitions are closed.

17.11.2023

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Index : yes/no
Neutral Citation : yes/no

To

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2. The Principal Commissioner of Income Tax -1,
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Krishnan Ramasamy,J.,

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W.P.Nos.29031 of 2022
and
W.P.Nos.13051 and 13058 of 2023

17.11.2023

W.M.P.Nos.28318 of 2022
in
W.P.Nos.29031 of 2022
and
W.M.P.Nos. 12832 & 12838 of 2023
in
W.P.Nos.13051 and 13058 of 2023

Krishnan Ramasamy, J.,

These Dispense Petitions are ordered.

17.11.2023

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