IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.11.2023

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THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

W.P.No.29199 of 2022
and
W.M.P.Nos.28491, 28493 of 2022 & 26659 of 2023

Mohammed Mohideen ... Petitioner

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

Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari, to call for the records of the writ petitioner on the file of the first respondent to quash the impugned order dated 14.09.2022 passed under Section 143(3) read with Section 144B of the Act for the Assessment Year 2020-2021 DIN: ITBA/AST/S/143(3)/2022-23/1045628522 (1).

For Petitioner : Mr.A.S.Sriraman

For Respondents : Mr.B.Ramana Kumar
Senior Standing Counsel

ORDER

The challenge in the Writ Petition is to the assessment order passed by the respondent dated 14.09.2022.

2. The learned counsel appearing for the petitioner would submit that the respondent-Department issued two show cause notices dated 21.03.2022 and 24.08.2022 respectively, the petitioner, on receipt of the first show cause notice filed a reply dated 22.03.2022 and also made a request to grant an opportunity of personal hearing through video conferencing, however, the respondent, without considering the said request, issued one more show cause notice on 24.08.2022 by copying the contents made in the earlier show cause notices and provided only three days' time to the petitioner to file reply, i.e. on or before 28.08.2022 at 13:58 hours.

2.1 The learned counsel further submitted that, all the notices were uploaded in the web portal under the provisions of the Income Tax Act and

Rules. It is contended that the notice may be sent either through registered post or by way of e-mail, and in the present case, the second show cause notice alone has been sent by way of e-mail, which is similar to that of the first show cause notice issued on 21.03.2022 and the petitioner filed reply to all the show cause notices.

2.2. The learned counsel submitted that the respondent-Department has not provided sufficient time to file reply and it is further the grievance of the petitioner that though the petitioner filed replies/objections to all the show cause notices issued to them and made a request for providing an opportunity of personal hearing through video conferencing, the respondent-Department has neither considered the said request made by the petitioner, nor, appreciated the stand taken by the petitioner, in their replies, rather, proceeded to complete the assessment on 14.09.2022,which is nothing but a mere extraction of the reply made by the petitioner, which finally states that the reply is not acceptable. Therefore, the learned counsel prayed for setting aside the impugned order.

3. The learned Standing Counsel appearing on behalf of the respondents would submit that all the notices have been uploaded in the web portal and the same was received by the petitioner and the petitioner has also been afforded with an opportunity of personal hearing and insofar as the second show cause notice dated 24.08.2022 is concerned, the petitioner has been provided three days time, however, no reply was filed by the petitioner nor any request was made for personal hearing and it was only under these circumstances, the impugned order came to be passed.

4. I have given due considerations to the submission made by the learned counsel for the petitioner and the learned Senior Standing for the respondent and perused the materials available on record.

5. The petitioner has been issued with two show cause notices, out of which, the first show cause notice dated 21.03.2022 is similar to that of the second one, which is dated 24.08.2022 and before issuing the first show cause notice, the respondent-Department has sought for certain informations from the petitioner, which, the petitioner also provided, however, all of a sudden, by virtue of the first show cause notice, dated 21.03.2022, the petitioner was called upon to file reply within 5 days, i.e. on or before 26.03.2022 and the petitioner also filed their reply within the time specified and also made a request for personal hearing through video conferencing. However, no personal hearing was provided to the petitioner. Under these circumstances, after a period of five months' time, again, the respondent-Department uploaded a similar show cause notice (viz., second show cause notice) dated on 24.08.2022, calling for petitioner's reply within three days' time i.e., on or before 28.08.2022.

5.1 . Therefore, the contention of the petitioner that by virtue of two show cause notices dated 21.03.2022 and 24.08.2022, only a short period of time, i.e. 5 days and three days respectively was granted to the petitioner to file their reply/objections, which is not sufficient for the petitioner to file detailed reply merits consideration.

5.2 Further, it is seen that the petitioner, despite having been provided with limited time to file reply, with great difficulty, filed their reply to the first show cause notice dated 21.03.2022 within the specified time, however, no order has been passed in regard to the said reply and no opportunity of personal hearing was provided and after a period of five months, the petitioner has been issued with second show cause notice dated 24.08.2022, which is nothing but similar to that of the first show cause notice dated 21.03.2022, and by virtue of the second show cause notice, dated 24.08.2022, the petitioner was granted three days time to file reply. Accordingly, the petitioner filed reply within the specified time. But, on perusal of the impugned order, it is seen that the respondent has merely recorded the reply filed by the petitioner and finally, stated that the reply is not acceptable.

5.3 When the petitioner is filing his reply, the Assessing Officer, without committing any default, is supposed to deal with the points/queries raised by the petitioner in their reply/objection by assigning parawar remarks/reasons for rejection of any particular claim made by the petitioner. In the present case, the respondent-Department has failed to consider the said aspect. Therefore, the impugned order is untenable on this ground alone.

5.4 Further, despite the fact that the petitioner has made a specific request for provision of an opportunity of personal hearing through video conferencing, in regard to the first show cause notice, the respondent-Department has failed to grant any such opportunity and even when the second show cause notice was issued, no opportunity of personal hearing has been provided and claim came to be rejected by the respondent-Department directly.

5.5 It would not be out of place to mention here the opportunity of being heard is the right available to assessee/petitioner to purtforth their contentions to defend their claim/case in an effective manner, and respondent-Department cannot deprive away of such rights, since the real intention of Section 144 B, etc of the Income Tax Act is to provide an opportunity of being heard to the assessee before passing any orders, which are prejudicial to their rights/ interests. It is, with such motive, law has been enacted to safeguard the interest of the assessee. In the present case, since the respondent-Department having failed to grant the opportunity of personal hearing, the impugned order is unsustainable on this ground as well

5.6 In such view of the matter, this Court is inclined to set aside the impugned order dated 14.09.2022 passed by the 1st respondent.

6. Accordingly, the Writ Petition is allowed, the impugned order is set aside and the matter is remanded back to the first respondent for fresh consideration, in which case, the first respondent is directed to provide an opportunity of personal hearing through video conference (as sought for by the petitioner in their earlier reply) and thereafter, shall pass the assessment order by considering the replies filed by the petitioner and assigning reasons with regard to the issues raised by the petitioner in the reply. No costs. Consequently, connected Miscellaneous Petitions are closed.

02.11.2023
(1/2)

Jeni

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

To

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KRISHNAN RAMASAMY, J.

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