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WP No.33756 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.12.2023

CORAM:

THE HON'BLE MR. JUSTICE KRISHNAN RAMASAMY

W.P No.33756 of 2023
and WMP Nos.33594 & 33595 of 2023

The Ramco Cements Limited
Represented by its authorised signatory
Mr.T.Mathivanan
Ramandiram, Rajapalayam,
Also at No.98A, Dr.Radhakrishnan Salai,
Mylapore, Chennai – 600 004.

...

Petitioner

VS.

The Income Tax Officer,
National Faceless Assessment Centre,
Assessment Unit, Income Tax Department,
Ministry of Finance,
Room No.401, 2nd Floor, E-Ramp,
Jawaharlal Nehru Stadium
New Delhi – 110 003.

...

Respondent

Prayer : Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of certiorari calling for the records of the respondent related to the impugned assessment order dated 13.11.2023 passed by the respondent in ITBA/AST/S/143(3)/2023-24/1057907749(1) for Assessment Year 2021-2022 and quash the same.



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For Petitioner : Mr.P.J.Rishikesh
For Respondent : Dr.B.Ramaswamy,
Senior Standing Counsel

ORDER

This writ petition has been filed to call for the records of the respondent related to the impugned assessment order dated 13.11.2023 passed by the respondent in ITBA/AST/S/143(3)/2023-24/1057907749(1) for Assessment Year 2021-2022 and quash the same.

2. The case of the petitioner is that the petitioner filed return of income on 09.03.2022 and thereafter filed revised returns on 31.03.2022. As there was variation in the returns filed to the tune of Rs.43,42,55,948/- , the Assessing Officer had referred to the Transfer Pricing Officer (TPO) to give their comments on the proposed variation pertaining to the price variation issue and the TPO had filed his report. Once the TPO report is filed, the respondent is supposed to have passed a draft assessment order under Section 144(C) of the GST Act. However, without passing the draft assessment order, the respondent had directly passed the final assessment order. Hence, this writ petition.



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3. Mr.P.J.Rishikesh, learned counsel appearing for the petitioner would submit that, in the present case, as there was a variation in the returns filed by the petitioner to the tune of Rs.43,42,55,948/-, in terms of Section 92 C (3), the Assessing Officer had referred the subject matter to the Transfer Pricing Officer (TPO). On 13.10.2023, the Transfer Pricing Officer passed an order in terms of Section 92 (C) (A) (3) of the GST Act. The said order was intimated to the Assessing Officer on 19.10.2023. Thereafter, the respondent had issued a show cause notice on 19.10.2023. The petitioner had filed their reply on 24.10.2023 requesting the respondent to pass a draft assessment order in terms of Section 144 (C) of the GST Act. However, without following the mandatory procedure of passing a draft assessment order, under Section 144 (C), the respondent passed a final assessment order on 13.11.2023. Hence, the learned counsel would contend that the impugned assessment order passed by the respondent is liable to be set aside.

4. The learned counsel also referred to the following judgments in support of his contention -

1. 2017 SCC Online Del 8441 [***Turner International India Pvt. Ltd. vs. Deputy Commissioner of Income Tax Circle***]



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2. 2018 SCC Online Mad 13752 [*Asst. Commissioner of Income Tax v. Vijay Television Pvt. Ltd.*]
3. Order dated 22.12.2021 in W.P.No.1802 of 2021 (Bombay High Court) [*Shell India Market Pvt. Ltd. v. Additional / Assistant Commissioner of Income Tax*].

5. By referring to the above judgments, the learned counsel for the petitioner submitted that since the mandatory procedure of passing a draft assessment order under Section 144 (C) has not been followed, the entire assessment gets abated.

5. Per contra, Dr.B.Ramaswamy, learned Senior Standing Counsel appearing for the respondent contended that in the present case, the draft assessment in terms of Section 144 (C) was made by the respondent and he referred to a portion of the said draft assessment order which reads as follows -

“Accordingly, the assessment is being assessed u/s.143(3)/144C(1) of the Income Tax Act, 1961 at Rs.746,96,00,420/-. Issue demand notice under Section 156 of the



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I.T. Act. Charge interest as per I.T. Act. Allow credit of prepaid taxes. Initiate penalty proceedings under Section 270A of the I.T. Act for under reporting of Income separately.”

6. By referring to the above paragraph, the learned Senior Standing Counsel for the respondent would contend that the present impugned order is a draft assessment order passed under Section 144 C (1) of the Income Tax Act. He further referred to the previous orders passed by the Assessing Officer in similar circumstances on 27.09.2023 wherein in also, the Assessing Officer has passed the following order which is extracted hereunder -

“Accordingly, the assessment is being assessed u/s.143(3)/144C(1) of the Income Tax Act, 1961 at Rs.383,84,32,270/-. Issue demand notice under Section 156 of the I.T. Act. Charge interest as per I.T. Act. Allow credit of prepaid taxes. Penalty proceedings initiate separately u/s 270A for under reporting of Income.”

7. By referring to the above said paragraph and comparing the similar paragraph with the impugned order passed by the respondent in the present case, the learned Senior Standing Counsel would contend that against the draft order passed on 27.09.2023, the petitioner has approached the Transfer Pricing Officer by considering the order passed under Section 144 C (1) as draft assessment. However, in the present



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case, though the draft assessment order has been passed in terms of Section 144C(1) of I.T Act, the petitioner has considered the same as final assessment order since in the first page, the word “Draft Assessment Order u/s 144C(1) of the Income Tax Act” has not been mentioned. Further, he would mainly contend that in the present case, it is only a draft assessment order passed in terms of Section 144C(1) of the Income Tax Act and therefore, he prayed for dismissal of the writ petition.

8. I have given due consideration to the submissions made by the learned counsel for the petitioner as well as the learned Senior Standing Counsel appearing for the respondent and perused the materials on record.

9. In the present case, on 09.03.2022, the petitioner filed Income Tax Returns (ITR). Again on 31.03.2022, he filed revised ITR. The respondent issued intimation and notice under Section 143 (2) of the Income Tax Act, 1961 on 28.06.2022. Notice under Section 142(1) of I.T. Act was issued on 16.08.2023. The petitioner submitted their response on 26.08.2023. Thereafter, on 27.09.2023, the respondent



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passed an order referring the matter to Transfer Pricing Officer (TPO) in terms of Section 92CA of Income Tax Act. The TPO passed an order on 13.10.2023 in terms of Section 92CA(3) of Income Tax Act. On 19.10.2023, Show Cause Notice u/s 143(3) of Income Tax Act was issued against the petitioner. The petitioner submitted their response on 24.10.2023 and on 13.11.2023, the impugned order u/s 143(3)(1) of the Income Tax Act was passed.

10. Now the issue for consideration is, whether the said impugned order passed is a draft assessment order or not?.

11. According to the respondent, they have categorically mentioned at the end of the assessment order that this assessment order is passed under Section 144 (C) (1) of the Income Tax Act. Therefore, the said assessment order is only a draft assessment order against which the petitioner can very well file an appeal before the Dispute Resolution Panel (DRP). However, the petitioner would submit that though provisions under Section 144 (C)(1) of the Income Tax Act has been mentioned in the order, in the first page of the said impugned order, they have not mentioned anything about the order passed under Section 144(C) (1) of the Act. Therefore, it should be construed only as a final



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assessment order . However, this Court is not in a position to accept the contention of the petitioner for the reason that the respondent has convinced this Court that the present order is only a draft assessment order. Though the word “draft assessment” is missing, the provision under Section 144 (C) of the Income Tax Act is very much available and any order whatsoever in the form, in the event of the provisions by referring Section 144 (C) (1) of the Act, it should be construed only as a draft assessment order. No deficiency or discrepancy could be found in the order for not mentioning the word “draft assessment order” and by virtue of which, it would not get abated.

11. In view of the above, this Court is of the considered view that the impugned Assessment Order should be considered as a draft assessment order and the petitioner, if so aggrieved, can very well file an appeal before the Dispute Resolution Panel (DRP) under the provision of 144 (C) of the Income Tax Act. Though the petitioner has referred various case laws, but those case laws are pertaining to final assessment order passed without any draft assessment order in which case the assessment has to be abated. In the present case, this Court arrives at a conclusion that the impugned assessment order passed by the respondent



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is only a draft assessment order in which case, the petitioner has to approach the appropriate forum and address their grievance in terms of Section 144 (C) of the Income Tax Act. At this juncture, the learned counsel appearing for the petitioner would submit that a time frame may be fixed by this Court for approaching the Dispute Resolution Panel.

12. Considering the submission made by the learned counsel for the petitioner, this Court is inclined to grant time to the petitioner to file appeal before the Dispute Resolution Panel against the impugned assessment order, within a period of thirty (30) days from the date of receipt of a copy of this order, in terms of Section 144 (C) of the Income Tax Act. Since this Court considered the impugned assessment order passed by the respondent as draft assessment order, no demand can be raised and accordingly the said demand notice alone needs to be set aside and it is accordingly set aside. Needless to add that the Dispute Resolution Panel is entitled to raise fresh demand notice.

13. With the above directions, this Writ Petition is disposed of. No costs. Consequently, connected Miscellaneous Petitions are closed.



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

The Income Tax Officer,
National Faceless Assessment Centre,
Assessment Unit, Income Tax Department,
Ministry of Finance,
Room No.401, 2nd Floor, E-Ramp,
Jawaharlal Nehru Stadium
New Delhi – 110 003.



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KRISHNAN RAMASAMY, J.

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