BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED :17.04.2023

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THE HONOURABLE MS.JUSTICE P.T.ASHA

W.P.(MD)No.26117 of 2022
and
W.M.P.(MD).Nos.20268 & 20269 of 2022 and 3280 of 2023

M/s.Majestic Printers
Rep by its Partner,
Mr.J.Ramesh Kumar,
98, Sattur Road,
Sivakasi. ... Petitioner

Vs.

1.The Income Tax Authority,
Assessment Unit-Income Tax Department,
National Faceless Assessment Circle,
New Delhi.

2.The Income Tax Officer,
Ward-3,
Virudhunagar-626 001. ... Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorari call for the records pertaining to the impugned assessment order dated 21.09.2022 bearing DIN & Order No.ITBA/AST/S/143(3)/2022-23/1045771493(1) purportedly passed under Section 143(3) read with Section 144B of the Income Tax Act, 1961 for the

Assessment Year 2020-21, by the first respondent and quash the same.

For Petitioner :Ms.T.V.Muthu Abirami

For Respondents :Mr.N.Dilipkumar
Senior Standing Counsel

ORDER

This writ petition has been filed for a Certiorari calling for the records pertaining to the impugned assessment order dated 21.09.2022 bearing DIN and Order No.ITBA/AST/S/143(3)/2022-23/1045771493(1) purportedly passed under Section 143(3) read with Section 144B of the Income Tax Act, 1961 for the Assessment Year 2020-21.

2.The case of the petitioner is that he is the assessee under the Income Tax Act under Permanent Account No.AACFM8098A that they have been regularly paying the return of income in keeping with the provision of the Income Tax Act for the year ending 2020-2021. The petitioner had filed its return of income on 15.02.2021 declaring a total income of Rs.8,14,880/- and tax to the tune of Rs.2,54,244/- was paid. Thereafter, on 08.03.2022, the petitioner had received an E-mail from the

National Faceless Assessment Centre (NFAC), calling upon the petitioner to provide a reply to the notices issued by the NFAC. The learned counsel for the petitioner would further submit that they were served with the notices dated 02.12.2021, 20.12.2021 and 17.02.2022 and on 10.03.2022, all these notices were issued under Section 142(1) of the Income Tax Act (herein after called 'the Act'). The notices were hand delivered to the petitioner by the Income Tax Inspector, Trichy. The petitioner thereafter collated the necessary documents and furnished its reply on 18.03.2022, 25.03.2022 and 28.03.2022 and the petitioner did not receive any response to the above. However, on 28.10.2022, the petitioner was surprised to receive the show cause notice claiming penalty under Section 270(A) of the Income Tax Act. When that the petitioner logged into the income tax web portal of the respondents, the petitioner was shocked to find that on 21.09.2022, the impugned assessment order had been passed by adding a sum of Rs. 2,28,143/- for an alleged excess payment of provident fund, a sum of Rs. 61,613/- in respect of alleged excess interest paid to the creditor and a sum of Rs.4,83,90,847/- as alleged sundry creditors and a demand of Rs. 2,27,55,141/- was raised by way of a demand notice under Section 156.

3. On perusal of the portal, the petitioner came to know that after the reply provided by the petitioner on 28.03.2022, two notices were issued under Section 142(1) dated 29.06.2022 and 01.09.2022 and one show cause notice dated 08.09.2022. These notices were neither received through E-mail nor hand delivered. The petitioner would further submit that they were not given opportunity to put forth their explanation and submit documentary evidence. The petitioner would further submit that a sum of Rs. 4,83,90,847/- under the head of alleged sundry creditors, had been taken into account, for which the petitioner was neither put on notice nor an explanation sought for. Therefore, the petitioner had come forward with the present writ petition seeking to quash the impugned order primarily on the ground that (a) they were not given an opportunity to put forth their case and submit their documentary evidence. (b) the procedure under Section 144(B) had not been followed, since a real time alert have not been given to the petitioner as envisaged under Section 144(B). The petitioner had come to learn about the impugned order only when the show cause notice for penalty under Section 270(A) has been issued. There is no basis for treating

a sum of Rs.4,83,90,847/- as income.

4. The learned counsel appearing on behalf of the petitioner would make her submissions primarily on the ground that (a) the principle of natural justice had been followed since no prior notice has been given, nor the petitioner given an opportunity to put forth their case and (b) The respondents have not made available the draft assessment which is to be provided under the procedure contemplated under Section 144(B) and that the petitioner has not been given the real time alert. Therefore, she would submit that the petitioner should be given an opportunity or should set aside the matter and remit back for giving an opportunity to the petitioner to put fourth their case.

5. Mr.Dilipkumar, learned Senior Standing Counsel appearing on behalf of the respondents revenue would submit that the procedure under Section 144(B) proceedings as contemplated under Section 144(B) dealing with the faceless assessment has been followed in letter and spirit. He would submit that every order has been communicated to the petitioner in the

manner as contemplated under the provisions of the Act and the petitioner has come to the Court with incorrect statement. He would submit that even the petitioner has also been given the real time alert inasmuch as the e-mail showing proof of mail communication for the notice issued under Sections 142(1) and 143(2) of the Income Tax Act to comply with the real time alert as contemplated under the Act. He would, however, submit that the issue on hand that as against the impugned order, the appellant is entitled to file an appeal under Section 246(A) of the Act and without awaiting the appellate remedy, the petitioner has wrongly approached this Court.

6. Heard the learned counsel appearing on either side and perused the entire materials available on record.

7. The petitioner's claim is that they have not been served with the prior notice and have been prevented them from putting forth their case. This statement appears to be incorrect in the light of the proof of mail communications submitted by the learned counsel for the respondent where every proceedings has been communicated under the cover of a letter/e-

mail, to which the orders were attached. Therefore, *prima facie,* the contention of the appellant appears to be incorrect. The second argument that has been canvassed by the petitioner is that they have not been served with the provisions of Section 144 (B) (7) relating to the real time alert. Section 144 (B) (10) defining a real time alert.

8. Therefore, the real time alerts could be in the form of a SMS or an update on the mobile app or by way of an E-Mail to the registered e-mail address.

9. In the instant case, the documents filed on the side of the respondents relating to the proof of mail communication would show substantial compliance of this rule. Be that as it may, as pointed out by the learned Senior Standing Counsel appearing on behalf of the respondents, the petitioner has an alternative remedy in the form of an appeal under Section 246(A) of the Income Tax Act.

10. A reading of the impugned order would show that it is a detailed speaking order and the petitioner has to only challenge the same by way of an appeal and not by invoking an extraordinary jurisdiction of this Court under Article 226 of the Constitution of India.

11. Accordingly, the present writ petition stands dismissed with a direction to the petition to approach the appellate authority and upon receipt of the same, the appellate authority is directed to dispose of the same within a period of four weeks from the date of receipt of an appeal filed by the petitioner. No costs. Consequently connected miscellaneous petitions are closed.

17.04.2023

NCC :Yes/No
Internet :Yes/No
Index :Yes/No
sbn

To

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