IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 24.09.2024

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THE HON'BLE MR. JUSTICE KRISHNAN RAMASAMY

W.P.No.1365 of 2023 &
W.M.P.No.1427 of 2024

L.G.Balakrishnan & Bros Ltd
Represented by its Chief Financial Officer
Mr.N.Rengaraj ... Petitioner

Vs.

Assessment Unit
Income Tax Department
National Faceless Assessment Centre
National e-Assessment Centre
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 praying to issue a Writ of Certiorari, to call for the records of the impugned order of assessment passed by the respondent in DIN-ITBA/ AST/S/ 143(3)/ 2022-23 / 1048381712(1) dated 31.12.2022 and the impugned consequential notice of demand in DIN and Notice No.ITBA/ AST/S/ 1/ 156/ 2022-23/ 1048381743(1) dated 31.12.2022 violative of the provisions of the Income tax Act, 1961 under

Section 144B(1) (xxxv)(b) and hence violative of natural justice, quash the same as illegal.

For the Petitioner : Ms.Lakshmi Sriram

For the Respondent : Dr.B.Ramaswamy
Sr. Standing Counsel

ORDER

The present Writ Petition is filed challenging the impugned order of assessment and the consequential notice of demand dated 31.10.2022 passed by the respondent.

2. The learned counsel for the petitioner would submit that in the present case an addition was made to an extent of Rs.27,79,70,100/- under Section 69 C of the Income Tax Act (hereinafter referred to as 'the Act') as unexplained expenditure. The respondent has not issued show cause notice, proposing to treat the alleged difference between the purchases reported in GSTR – 1 and the petitioner's Profit and Loss Account as unexplained expenditure under Section 69 C of the Act.

3. The learned counsel would submit that instead of considering the reconciliation filed by the petitioner in response to the original notice issued under Section 69 of the Act, which was proposed to treat the alleged purchases as unexplained investment, the respondent, for the first time in the impugned assessment order, invoked Section 69 C of the Act to treat the alleged difference in purchases as unexplained expenditure. The learned counsel further submits that the particulars of the entire amount, which pertains to purchases below Rs.10 Lakhs have been duly uploaded with all the relevant details. However, the impugned order was passed without application of mind. She submits that the petitioner was not given sufficient opportunities to put forth his case on the aspects of 69 C issues, thereby the respondent violated the principles of natural justice. The learned counsel further prayed to remand the matter back to the respondent with liberty to explain her case.

4. Dr.B.Ramaswamy, the learned Senior Standing Counsel appearing for the respondent strongly objected to the submissions made by the learned counsel for the petitioner and filed a detailed counter. Wherein in paragraph Nos.4 and 5 it has been stated as follows:-

"4.It is submitted with regard to grounds mentioned as (b) to (g) and (i) the whole point that the assessee is putting forth here is that, the Assessment order was passed with additions on account of excess purchases recorded in books of accounts in comparison to the sales declared by other parties in their GSTR Insight data amounting to rs.27,29,70,100/- under the provisions of Section 69 C (unexplained expenditure) rather than under Section 69 (unexplained investment). The assessee's laying undue emphasis on the fact that they were not issued with a separate show cause notice with proposed additions under Section 69 C is an attempt to digress the factual position associated with the impugned assessment proceedings.

5.It is submitted with regard to para (f) of the grounds: The assessee vainly alleges that nowhere in the order of assessment did the AO give reasons as to why the claim of the assessee in respect of the difference in figures of purchases that resulted in the additions was not accepted. However, in page Nos.11 & 12 of the order u/s 143 (3) r.w.s 144B, the AO enumerates in detail, why the said addition of

Rs.27,79,70,100/- should be brought to tax as income of the assessee. Hence, the ground raised by assessee is contrary to facts on record.”

However, he would submit that in the event of remanding the matter to the respondent, it would only consider the aspect of unexplained expenditure under Section 69 C of the Act alone.

5. In reply, the learned counsel for the petitioner would submit that the entire case is only on the alleged unexplained expenditure only.

6. Heard the learned counsel for the petitioner and the learned counsel for the respondent and perused the materials placed before this Court.

7. In the present case notice was issued by the respondent for the purpose of unexplained investment under Section 69 C of the Act. In the said notice, nothing has been mentioned about the unexplained expenditure as stated in the assessment order to an extent of Rs.27,79,70,100/-. Thus, the petitioner had no occasion to explain his case and to file an appropriate reply before the authorities

concerned, before making the impugned assessment order. Therefore, this is a clear case of violation of principles of natural justice.

8. Taking into consideration the above aspects, this Court feels that it would be appropriate to give one more opportunity of personal hearing to the petitioner. Hence, the assessment order as well as the consequential notice of demand dated 31.12.2022 passed by the respondent are set aside. While setting aside the impugned assessment order as well as the consequential notice of demand, this Court is inclined to remand the matter back to the respondent for reconsideration. Accordingly, the matter is remitted back to the respondent for reconsideration.

9. In such view of the matter, this Court passes the following order:-

(i) The petitioner is directed to file his reply within a period of four (4) weeks from the date of receipt of a copy of this order;

(ii) thereafter, the respondent is directed to provide opportunities of personal hearing by sending notice by providing 14 clear days time to the petitioner and decide the matter on merits and in accordance with law.

10. With the above direction, this Writ Petition is disposed of. There shall be no order as to costs. Consequently, the connected Miscellaneous Petition is closed.

24.09.2024

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

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National Faceless Assessment Centre
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Ministry of Finance
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KRISHNAN RAMASAMY.J.,

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