IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 05.09.2024

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THE HON'BLE Mr. JUSTICE KRISHNAN RAMASAMY

W.P.No.1919 of 2024 &
W.M.P.No.2024 of 2024

Grace Gated Community
5th Floor, NLP Devi, New No.111, Old No.59,
L.B.Road, Thiruvanmiyur, Chennai-600 041
Represented by its Chief Financial Officer
Mr.Rajneesh Jain ... Petitioner

Vs.

Additional Commissioner of Income Tax
Central Board of Direct Taxes
Department of Revenue,
Ministry of Finance, Government of India,
New Delhi. ... Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue Writ of Certiorarified Mandamus to call for the records of the Respondent contained in its order passed under Section 119(2) of the Income Tax Act, 1961, bearing reference F.No.197/41/2021-ITA-1, dated 06.10.2023 in PAN:AAQFG2772 for Assessment Year (AY) 2019-20 and to quash the same as arbitrary, unjust and illegal and to consequently direct the Respondent to condone the delay in filing the return of income for AY 2019-20.

For Petitioner : Mr.Suhrith Parthasarathy

For Respondent : Mr.A.N.R.Jayaprathap
Junior Standing Counsel

O R D E R

This writ petition has been filed by the petitioner challenging the order dated 16.10.2023 passed by the respondent and to quash the same.

2. The learned counsel for the petitioner would submit that the Petitioner Firm is engaged in the business of developing and building housing projects. He further submitted that due to the resignation of the accountant ,they were unable to file their return of income for the Assessment Year 2019-2020 within the time prescribed under Section 139(1) of the Income Tax Act, 1961 (in short 'the Act') i.e., on or before 31.10.2019. However the Petitioner filed the return of income belatedly on 04.02.2020, in which the Petitioner claimed deduction under Section 80IBA of the Act. Thereafter, the Petitioner came to know that Section 80AC of the Act was amended/substituted with effect from Assessment Year 2019-2020 and deductions under Section 80IBA will not be permitted unless the return of income is filed within the time prescribed under Section 139(1) of the Act. He further submitted that since this condition was introduced for the first time from Assessment Year 2019-20 onwards, the Petitioner was not aware of the same. As the Petitioner was otherwise eligible under Section 80IBA of the Act, they filed an application under Section 119 (2) of the Act on 29.12.2020

seeking condonation in filing its return of income for AY 2019-2020. Thereafter, on 27.09.2021, the Respondent issued a notice calling upon the Petitioner to furnish proof for eligibility to obtain deduction under Section 80IBA of the Act, for which the Petitioner submitted its reply on 01.10.2021 and 20.10.2021, along with supporting documents. The Respondent, without considering the same passed the impugned order dated 06.10.2023, rejecting the application of the Petitioner. He further submitted that in the impugned order, the Respondent made a reference to the show cause notice dated 06.09.2023, served on the Petitioner on 15.09.2023, which the Petitioner was not aware of till the impugned order is passed. Further, he would submit that the Respondent simply rejected the application on the ground that the Petitioner has not complied with the conditions stipulated under Section 119 (2)(c) of the Act. He further submitted that though the impugned order was received, it was not duly communicated to the Petitioner Management and therefore the Petitioner had not filed its reply to the show cause notice.

3. Further, he would submit that impugned order was passed without affording an opportunity of personal hearing to the Petitioner and therefore the same is in violation of principles of natural justice and hence prays to set aside the same.

4. On the other hand, the learned junior standing counsel appearing for the Respondents would submit that the Petitioner has not filed any proof with regard to the resignation of their accountant and other grounds raised in its reply for the notice dated 27.09.2021 and therefore the same was not considered. He further submitted that despite receipt of the show cause notice dated 06.09.2023, the Petitioner has not filed its reply and therefore the impugned order came to be passed.

5. Heard the learned counsel for the petitioner and the learned Junior Standing Counsel for the respondents and also perused the materials available on record.

6. In the present case, it appears that no opportunity of personal hearing was provided to the petitioner prior to the passing of impugned order. Hence, this Court is of the view that the impugned order was passed in violation of principles of natural justice and it is just and necessary to provide an opportunity to the petitioner to establish their case on merits. In such view of the matter, this Court is inclined to set aside the impugned order dated 16.10.2023 passed by the respondent. Accordingly, this Court passes the following order:-

(i) The impugned order dated 16.10.2023 is set aside and the matter is remanded to the respondent for fresh consideration.

(ii) The petitioner shall file their reply/objection along with the required documents, if any, within a period of two weeks thereafter.

(iii) On filing of such reply/objection by the petitioner, the respondent shall consider the same along with replies already filed on 01.10.2021 and 20.10.2021 to the 1st notice dated 27.09.2021 and issue a 14 days clear notice by fixing the date of personal hearing to the petitioner and thereafter, pass appropriate orders on merits and in accordance with law, after hearing the petitioner, as expeditiously as possible.

05.09.2024

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

Additional Commissioner of Income Tax
Central Board of Direct Taxes
Department of Revenue,
Ministry of Finance, Government of India,
New Delhi.

KRISHNAN RAMASAMY.J.,
arr

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