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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.09.2024

CORAM

THE HONOURABLE MR.JUSTICE **C.SARAVANAN**

W.P.No.5844 of 2022
and
W.M.P.Nos.5938 & 5941 of 2022

Employers Federations of Southern India,
2D, Eldorado Building,
2nd Floor, 112, Nungambakkam High Road,
Chennai 600 034. ... Petitioner

vs.

1. The National Faceless Assessment Centre,
Delhi.

2.The Commissioner of Income Tax (Exemptions)III,
M.G.Road, Nungambakkam,
Chennai 600 034. ... Respondents

Prayer : Petition is filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, to call for the records of the respondents in the impugned order dated 25.10.2021 in ITBA/AST/S/144/2021-22/1036556037(1), quash the same as it has been passed in violation of Principles of Natural Justice without considering the reply filed by the petitioner without complying with the directions given by this Court by order dated 09.09.2020 in TCA.No.98 of 2018 and without serving on

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the petitioner a draft assessment order as mandated under Section 144B(1)(xvi) of the Income Tax Act, 1961.

For Petitioner : Mr.C.J.Yaswanth Ram

For Respondents : Mrs.Premalatha
Junior Standing Counsel

ORDER

The petitioner is before this Court against the impugned order dated 25.10.2021 passed under Section 144 r/w Section 260 r/w Section 144B of the Income Tax Act, 1961. The impugned order has been passed pursuant to a remand order passed on 09.09.2020 by this Court in **TCA.No.98 of 2018**.

2. After the remand order was passed by the Co-ordinate Division Bench of this Court in **TCA.No.98 of 2018 on 09.09.2020,** the petitioner had received few notices which apparently were sent wrongly to e-mail ID. However, a notice dated **08.10.2021** was sent by post which was

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received by the petitioner on **11.10.2021.** It was a remainder to the previous notices dated **23.09.2021** and **30.09.2021.** On the same day on **11.10.2021,** another notice was received by the petitioner asking the petitioner to reply to the above notice on or before **17.10.2021.** The draft assessment order as is contemplated under Section 144(B) of the Income Tax Act, 1961 was also said to have been sent to the petitioner.

3. The petitioner appears to have sent an adjournment request dated 1**2.10.2021** and sought time upto **24.10.2021.** The reply of the petitioner dated **22.10.2021** has been acknowledged by the respondent. However, the Impugned Assessment order has recorded that the petitioner has not responded to the notice and therefore the assessment was completed and that the Impugned Assessment Order was passed pursuant to the Order dated 09.09.2020 in **TCA.No.98 of 2018** and **CMP.No.1567 of 2018** dated **09.09.2020** by treating the taxable income of the petitioner as **Rs.11,86,560/-.**

4. Opposing the prayer, the learned counsel for the respondents submits that despite multiple opportunities being given to the petitioner,

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the petitioner failed to respondent and therefore the Impugned Order has been passed and therefore no fault can be attributed by the respondents.

5. The learned counsel for the petitioner has relied on the decision of the Bombay High Court in ***Chander Arjandas Manwani Vs NFAC*** (2021) 130 Taxmann.com 445 (Bombay). It reads as under :-

> Decision of the hon'ble Bombay High Court in the case of **Chander Arjandas Manwani Vs. NFAC** (2021) 130 taxmann.com 445 (Bombay)in which it was held that "when the National Faceless Assessment Centre is seeking documentary evidences that communication by no stretch of imagination can be even referred to as a draft assessment order..." However, in the above case law the Petitioner Chander Arjan Das did not receive any draft assessment order while in the present case the Show cause notice dated 11/10/2021 incorporated the Draft assessment order as below:
>
> > "Kindly treat this as a show cause notice and please be informed that, in the absence of an exhaustive reply accompanied by all the data, requested as above and mentioned in the earlier notices, this office would be in a position to or constrained to take a decision, as directed by the Hon'ble H C, without affording further notice, that is to say

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> that the Fresh Assessment in your case for the Assessment Year 2009-10, will be completed without any modification to the Original Assessment made on 30.12.2011, which is without exemption Under Section 11 of IT Act..."

> The above met the requirement of natural justice by clearly saying what additions as per original assessment order will be maintained. Hence the case law does not apply in this case.

6. A reading of the impugned order indicate that there is a violation of principles of natural justice. Therefore, the impugned order is quashed. The impugned order shall be treated as an addendum to Show Cause Notice dated 11.10.2021. The case is therefore remitted back to the first respondent to pass a fresh order on merits after considering Reply dated 22.10.2021 of the petitioner. The petitioner may, if desired, apply for personal hearing through Video Conferencing. The petitioner may also be permitted to file an additional reply, if any, within such time as may be prescribed by the respondent before personal hearing through Video Conferencing.

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C.SARAVANAN.J.

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7. This writ petition stands disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

06.09.2024

Index : Yes/ No
Internet : Yes/No
Speaking Order : Non Speaking Order,
Neutral Citation : Yes/No
kkd

<u>To</u>

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   Delhi.

2.The Commissioner of Income Tax (Exemptions)III,
   M.G.Road, Nungambakkam,
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