IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.11.2024

CORAM :

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.No.10867 of 2022
and
W.M.P.Nos.10485 of 2022 and 17956 of 2023

EMC HR Solutions,
Rep by its Managing Partner M.Marichamy,
71/28, 1st and 2nd Floor,
CIT Nagar,
1st Cross Street, Nandanam,
Chennai – 600 035. ... Petitioner

Vs.

1.The Additional/Joint/Deputy/Assistant Commissioner
of Income Tax/Income Tax Officer,
National Faceless Assessment Centre,
Income Tax Department,
Room No.401, 2nd Floor, E-Ramp,
Jawaharlal Nehru Stadium,
Delhi – 110 003.

2.The Income Tax Officer,
Non Corp. Ward 1(2) CHE/
Chennai Wanaparthy Block,
No.121, Mahatma Gandhi Road,
Nungambakkam,
Chennai – 600 034. ... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorarified Mandamus, to call for the records pertaining to impugned Assessment order issued by the first respondent in PAN:AAFFE4000R (DIN:ITBA/AST/S/147/2021-22/1041862085(1) dated 28.03.2022, quash the said order and the notice of demand under Section 156 of the Income Tax Act in DIN:ITBA/AST/S/156/2021-22/1041862142(1) and direct the respondents to reassess the income of the petitioner firm for the Assessment Year 2016-17 on merits based on the submissions made by the petitioner firm during the assessment proceedings by affording a reasonable opportunity to the petitioner firm.

For Petitioner	:	Mr.Ashwin Shanbhag
For Respondents	:	Mr.B.Ramana Kumar Senior Standing Counsel

ORDER

The petitioner is aggrieved by the impugned order dated 28.03.2022 passed under Section 147 read with Section 144 and and Section 144B of the Income Tax Act, 1961 for the Assessment Year 2016-2017.

2. The case of the petitioner is that the records of the petitioner was seized by Central Board of Investigation, as a result of which, the petitioner

could not file the return of income for the Assessment Year 2016-2017. It is submitted that after the Notice was issued under Section 148 of the Income Tax Act on 30.03.2021, the Draft Assessment Order cum Show Cause Notice were issued on 07.03.2022 during the period when the country was still under the lockdown due to the outbreak of Covid – 19 pandemic. It is submitted that immediately after the receipt of the aforesaid Draft Assessment Order cum Show Cause Notice was issued from the National Faceless Assessment Unit, the petitioner filed a reply and return of Income on 08.03.2022, which could not be downloaded by the respondents and thereafter further Show Cause Notice was issued on 25.03.2022 and the impugned order has been passed on 28.03.2022.

3. The learned counsel for the petitioner submits that the impugned order has been passed within three days from the date of the aforesaid Show Cause Notice dated 25.03.2022 and therefore there is a gross violation of principles of natural justice.

4. The learned Senior Standing Counsel for the respondents on the other hand would submit that the petitioner had failed to file a regular return

under Section 139(1) of the income tax act, 1961. It is submitted that even after issuance of Notice under Section 148 of the Income Tax Act, 1961 on 30.03.2021. The petitioner had failed to file a return of income, as it is required as per the provisions of the Act and as per the decision of the Hon'ble Supreme Court in the case of ***GKN Driveshafts (India) Ltd*** Vs. ***Income Tax Officer and Ors*** reported in 259 ITR 19 (SC).

5. It is submitted that the return was not filed in time. The Assessment Order was completed under Section 144 of the Income Tax Act, 1961 and therefore the respondents cannot be found fault with.

6. I have considered the arguments advanced by the learned counsel for the petitioner and the learned Senior Standing Counsel for the respondents.

7. In this case, there is a violation by the petitioner, as the petitioner had failed to file a return, as is required under section 139(1) of the Income Tax Act, 1961 or after issuance of Notice under Section 148 of the Income Tax Act, 1961 on 30.03.2021. The impugned order dated 28.03.2022

precedes a Show Cause Notice dated 25.03.2022. The impugned order has not given an opportunity to the petitioner for being heard. It appears that the reply that was uploaded by the petitioner in response to the Draft Assessment Order cum Show Cause Notice dated 07.03.2022 has not been considered by the respondents.

8. Even if Section 144 of the Act was to be invoked and some element of guess had to be done, based on the reply of the petitioner and the submissions that could have been made by the petitioner to explain the position.

9. Under these circumstances, Court is of the view the impugned order is unsustainable and is liable to be set aside and the case deserves to be remitted back to the respondents from the stage of reply dated 08.03.2022. The respondents shall thereafter pass a fresh order in the denovo proceedings on merits and in accordance with law as expeditiously as possible, preferably within a period of six months from the date of receipt of a copy of this order. The impugned order which stands quashed shall be treated as corrigendum to the Show Cause Notice dated 25.03.2022. The petitioner shall keep a reply

within a period of 30 days from the date of receipt of a copy of this order and thereafter uploaded as and when the portal is opened for uploading the same, as mentioned above. The respondents shall thereafter pass a fresh order on merits within a period of six months from the date of receipt of a copy of this order. Needless to state, the petitioner shall also be heard before final orders are passed.

10. This Writ Petition stands allowed with the above directions. No costs. Consequently, connected writ miscellaneous petition is closed.

19.11.2024

Index : Yes/No
Internet : Yes/No
Speaking Order/Non-Speaking Order
Neutral Citation : Yes/No
jas

To

1.The Additional/Joint/Deputy/Assistant Commissioner
of Income Tax/Income Tax Officer,
National Faceless Assessment Centre,
Income Tax Department,
Room No.401, 2nd Floor, E-Ramp,
Jawaharlal Nehru Stadium,
Delhi – 110 003.

2.The Income Tax Officer,
Non Corp. Ward 1(2) CHE/
Chennai Wanaparthy Block,
No.121, Mahatma Gandhi Road,
Nungambakkam,
Chennai – 600 034.

C.SARAVANAN, J.

jas

W.P.No.10867 of 2022
and
W.M.P.No.10485 of 2022

19.11.2024