IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.11.2024

CORAM :

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.No.10932 of 2022
and
W.M.P.Nos.10532, 10533 and 24237 of 2022

M/s.Mohan Mutha Exports Private Limited,
Represented by its Managing Director
Mr.Ramesh Mutha ... Petitioner

Vs.

1.The Additional/Joint/Deputy/Assistant Commissioner
of Income Tax/Income Tax Officer,
National e-assessment Centre,
Delhi.

2.The Deputy Commissioner of Income Tax,
TOP Circle 1(1), Chennai,
No.16, Greams Road,
Chennai – 600 006.

3.The Assistant Commissioner of Income Tax,
Corporate Circle – 4(1),
No.16, Greams Road,
Chennai – 600 006. ... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorari, to call for the records on the file of the respondent and quash the Impugned Order in ITBA/PNL/F/271AA/2021-2022/1041482304(1) dated 25.03.2022 under Section 271AA of the Income

Tax Act, 1961 for the Assessment Year 2017-2018 passed by the first respondent as illegal and not in accordance with law.

For Petitioner : Mr.R.Sivaraman

For Respondents : Mrs.S.Premalatha
Junior Standing Counsel

ORDER

This Writ Petition is directed against the Impugned Assessment Order dated 25.03.2022 passed under Section 271AA of the Income Tax Act, 1961.

2. The aforesaid Order precedes a Show Cause Notice dated 19.03.2022 directing the petitioner to respond by 21.03.2022.

3. The petitioner has partly responded by seeking further time to respond, however, before the petitioner could respond, the Impugned Assessment Order dated 25.03.2022 has been passed under Section 271AA of the Income Tax Act, 1961.

4. The background of the case is that the petitioner had certain international transactions and therefore the matter was referred to the Transfer Pricing Officer to ascertain whether the international transactions had any bearing on the income tax to be paid by the petitioner.

5. Under these circumstances, the petitioner appears to have filed through their Chartered Accountant, a Certificate in Form 3CEB. It appears that there were certain mistakes in Form 3CEB filed under Section 92E of the Income Tax Act, 1961 and therefore the manual copy of the same was filed with corrections which was acknowledged by the Transfer Pricing Officer while passing the Order on 22.12.2020.

6. While accepting the revised Audit Report in Form 3CEB under Section 92E of the Income Tax Act, 1961, the Transfer Pricing Officer had on one hand dropped the proceedings by holding no adverse inference was to be drawn on the international transactions entered into by the petitioner at the same time ordered penalty against the petitioner under Section 271AA of the Income Tax Act, 1961 for furnishing incorrect informations/documents/non-reporting transactions on account of the failure to furnish full and complete Audit Report under Section 92E of the Income Tax Act, 1961.

7. Learned counsel for the petitioner submits that there is a gross violation of principles of natural justice while passing the Impugned Assessment Order.

8. On the other hand, the learned Junior Standing Counsel for the respondents submits that a Notice for penalty was issued on 30.06.2021 pursuant to Order dated 22.12.2020 passed by the Transfer Pricing Officer under Section 92CA(3) of the Income Tax Act, 1961. However, the petitioner did not respond to the same and thereafter a fresh Notice was issued on 19.03.2022 and therefore it cannot be said that there is any gross violation of principles of natural justice.

9. Hence, the learned Junior Standing Counsel for the respondents would submit that the Writ Petition should be dismissed as the petitioner has an alternate remedy by way of appeal before the Appellate Commissioner under Section 246A of the Income Tax Act, 1961.

10. Having considered the submissions of the learned counsel for the petitioner and the learned Junior Standing Counsel for the respondents, this

Court is of the view that the petitioner is entitled to a temporary relief pursuant to the Impugned Assessment Order dated 25.03.2022 passed under Section 271AA of the Income Tax Act, 1961 as not only the Notice dated 30.06.2021 was issued but also the subsequent Show Cause Notice dated 19.03.2022 was issued during the time when the Country was still under continuous and intermittent lockdown due to outbreak of Covid-19 pandemic.

11. The Show Cause Notice dated 19.03.2022 was issued just about time when the normality was being restored.

12. Considering the same, the Impugned Assessment Order dated 25.03.2022 is set aside and the case is remitted back to the respondents to pass a fresh order on merits and in accordance with law, as expeditiously as possible, preferably within a period of 9 months from the date of receipt of a copy of this order.

13. The petitioner shall keep the reply ready and upload the same as and when the intimation is sent by the respondents.

14. This Writ Petition is disposed of with the above observations. No

costs. Connected Writ Miscellaneous Petitions are closed.

08.11.2024

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

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To

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C.SARAVANAN, J.

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