IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED**: 23.04.2024**

CORAM

THE HONOURABLE **MR.JUSTICE SENTHILKUMAR RAMAMOORTHY**

W.P.No.10658 of 2024
and W.M.P.Nos.11737, 11740, 11744 & 11746 of 2024

M/s.Imperial Shipping Service
Represented by its Partner
No.2/3, 3rd North Beach Road,
Parrys, Chennai 600 001.
PAN: AAAFI1452L ... Petitioner

-vs-

1.The Assessment Unit
Income Tax Department
National e-Assessment Centre, Delhi
E-Ramp, Jawaharlal Nehru Stadium,
Delhi 110 003.

2.The Deputy Commissioner of Income Tax
Non Corporate Circle 11(1), Chennai
Income Tax Department, No.62, Greams Road,
Thousand Lights East, Chennai 600 006.

3.The Principal Commissioner of Income Tax-4
Chennai, Income Tax Department,
No.121, Nungambakkam High Road,
Chennai 600 034. ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, pleased to issue a Writ of Certiorari, to call for the records of the writ petitioner on the file of the first respondent to quash the impugned order u/s.143(3) read with Section 144B of the Income Tax Act, 1961 dated 26.03.2024 in DIN: ITBA/AST/143(3)/2023-24/1063365661(1) for the Assessment Year 2022-23.

For Petitioner : Mr.A.S.Sriraman

For Respondents 1, 3 : Mrs.S.Premalatha, Jr. SC

For Respondent 2 : Dr.B.Ramaswamy, Sr. SC

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ORDER

An assessment order dated 26.03.2024 is challenged on the ground of breach of principles of natural justice. The petitioner filed the return of income for assessment year 2022-23 on 30.12.2022 by declaring income of Rs.1,19,06,850/-. Upon scrutiny thereof, notices were issued under Section 143(2) and Section 142(1). Upon receipt of show cause notice dated 19.03.2024 proposing a variation in respect of purchases reflected in the petitioner's GSTR 1 statement, the petitioner requested for further time by communication dated 20.03.2024. In response thereto, by communication dated 20.03.2024, the petitioner was granted time until 21.03.2024 to respond to show cause notice dated 19.03.2024. The petitioner responded on 21.03.2024 and produced the ledger account statement of the suppliers and asserted that the freight charge paid to suppliers is correct and that such payments were made through bank channels against invoices issued by such parties. The impugned assessment order was issued in these facts and circumstances.

2. Learned counsel for the petitioner pointed out that the show cause notice proposing the variation was issued on 19.03.2024 calling upon the petitioner to show cause on or before 20.03.2024. In spite of

a request for further time, he submitted that the time was extended by only one day. Within the limited time, he pointed out that the petitioner submitted a response on 21.03.2024 and also requested that if any further information is required, the petitioner would provide such information. By adverting to the impugned assessment order, learned counsel points out that the proposed variation was confirmed on the ground that the petitioner failed to provide invoices, income statements and the like. He also pointed out that the entire expenses of Rs.16,20,67,647/- were treated as unexplained expenditure and added to the income of the assessee under Section 69C read with Section 115BBE of the Income Tax Act. Since a reasonable opportunity was not provided to the petitioner, he submits that the impugned order warrants interference.

3. Mrs.S.Premalatha, learned junior standing counsel, accepts notice on behalf of the respondents. With reference to the details of opportunities provided, she submits that the impugned order was

preceded by three notices under Section 143(2) and Section 142(1). Therefore, she contends that reasonable opportunity was provided to the petitioner.

4. The show cause notice dated 19.03.2024 calls upon the petitioner to show cause on or before 20.03.2024 by enclosing all supporting documents such as bills, vouchers and bank statements. By reply dated 20.03.2024, the petitioner requested for further time to respond. By reply thereto dated 20.03.2024, the respondents stated that extension is being granted only up to 21.03.2024 since the limitation period is approaching. In the impugned assessment order, it is recorded as under:

> "*Thus, the assessee has been accorded sufficient opportunities and ample time to submit the documents/ evidences with respect to the transactions undertaken. Since the case is getting barred by limitation on 31.03.2024, no more opportunities could be given to the assessee.*
> *Considering the above facts and circumstances, I am taking the expenses claimed by the assessee on account of freight charges paid, amounting to Rs.16,20,67,647/- as unexplained expenditure and*

> *added back to the income of the assessee u/s 69C r.w.s 115BBE of the Act. Further I am satisfied that assessee is liable for penalty u/s 271AAC on account of addition made u/s 69C of the Act. I therefore initiate penalty u/s 271AAC of the Act.*"

5. From the above extracts, it is evident that the respondents refused to provide further time since the limitation period expires on 31.03.2024. By refusing further time, the entire expenses claimed by the assessee of the aggregate value of Rs.16,20,67,647/- were added to the income of the assessee as unexplained expenditure. Thus, without providing reasonable time to the petitioner, the proposed variation was confirmed. In these circumstances, the interest of justice warrants that a reasonable opportunity be provided to the petitioner.

6. Therefore, the impugned assessment order dated 26.03.2024 is set aside and the matter is remanded to the first respondent for reconsideration. The petitioner is permitted to submit a detailed reply by enclosing all relevant documents within ***fifteen days*** from

the date of receipt of a copy of this order. In order to enable the petitioner to upload such reply, the respondents are directed to provide access to the portal. Upon receipt of the petitioner's reply, the first respondent is directed to provide a reasonable opportunity to the petitioner, including by way of video conference hearing, and thereafter issue a fresh assessment order within a period of ***three months*** from the date of receipt of the petitioner's reply.

7. W.P.No.10658 of 2024 is disposed of on the above terms. No costs. Consequently, W.M.P.Nos.11737, 11740, 11744 and 11746 of 2024 are closed.

23.04.2024

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Index : Yes / No
Internet : Yes / No
Neutral Citation: Yes / No

SENTHILKUMAR RAMAMOORTHY,J

rna

To

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