IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.06.2024

CORAM

THE HON'BLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

W.P.No.15186 of 2024
and
W.M.P.Nos.16511 & 16513 of 2024

SHIROI ENERGY LLP,
Rep.by its Designated Partner,
Mr. Sridhar Kadavasal Vinodh ... Petitioner

Versus

1.Assessment Unit,
Income Tax Department,
National e-assessment Centre,
Delhi.

2.Income Tax Officer,
Non-Corporate Ward – 19(3),
Annex Building,
121, Aayakar Bhawan,
M.G. Road, Nungambakkam,
Chennai – 600 034. ... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, pleased to issue a Writ of Certiorarified Mandamus, calling for the records on the file of the 1st Respondent and quash the impugned order passed by the 1st Respondent in PAN ACPFS4398J under section 143(3) r.w.s 144B of the Income Tax, Act in ITBA/AST/S/143(3)2023-

24/1062680369(1) dated 15.03.2024 for the assessment year 2022-23 and consequently direct the 1st Respondent to complete the assessment for the AY 2022-23 afresh after granting reasonable sufficient opportunity of hearing.

For Petitioner	:	Mr. R. Sivaraman
For Respondents	:	Ms. S. Premalatha, Junior Standing Counsel.

ORDER

An assessment order dated 15.03.2024 in respect of assessment period 2022-23 is challenged in this writ petition on the ground that the documents submitted by the petitioner were not taken into consideration while issuing the assessment order.

2. In respect of the above mentioned assessment period, the petitioner filed the return of income on 29.09.2022 and declared an income of Rs.2,68,660/-. The petitioner's assessment was selected for scrutiny through CASS for the reason 'large turnover but the books of account not audited under Section 44AB' of the Income Tax Act, 1961. Therefore, a notice under Section 143(2) and subsequent notice under Section 142(1) were issued to the petitioner. By citing the ill-health of the auditor, the

petitioner stated that he could not reply to these notices. Therefore, show cause notice dated 24.01.2024 and 22.02.2024 were issued. By such show cause notices, the petitioner was called upon to respond in respect of multiple proposed variations. The petitioner replied to the show cause notices dated 22.02.2024 and 04.03.2024 and annexed several documents. Eventually, the impugned order dated 15.03.2024 was issued.

3. Learned counsel for the petitioner invited my attention to the impugned assessment order and pointed out that the most substantial variation confirmed by such order relates to foreign remittance of the aggregate value of Rs.3,74,55,496/-. He pointed out that the petitioner provided all details requested for in the show cause notice as Annexure 20 to the reply. In particular, he pointed out that the details of the vendors from whom solar panels were purchased, the relevant bills of entry, bills of lading, commercial invoices and the bank statement evidencing remittance towards such purchases was also provided. In spite of such evidence being submitted, learned counsel submits that the variation was confirmed on the ground that the assessee failed to furnish reconciliation statements of exports along with the Form-15CA/15CB. Even without requesting for

such documents, he submits that this conclusion was record. He also submits that these forms are not relevant or applicable because TDS was not deducted while making these payments. As regards variations in respect of expenses booked in the profit and loss account, he points out that the petitioner had provided sample invoices and also stated that the documentation is voluminous. In spite of providing sample invoices and stating that the documents are too voluminous to be uploaded, he submits that the variations were confirmed.

4. Ms. Premalatha, learned junior standing counsel, accepts notice for the respondents. She points out that the impugned assessment order was preceded by multiple notices under Section 143(2) and Section 142(1). By pointing out that the petitioner, which is a limited liability partnership, failed to respond to these notices, she submits that the assessing officer was constrained to confirm the variations on account of non-cooperation by the petitioner.

5. The impugned order discloses that four additions were made. The aggregate value of the additions is about Rs.4.53 crore. Out of these, the

most substantial addition is an addition on account of foreign remittance of about Rs.3.74 crore. In respect of this addition, the petitioner submitted relevant documents including the details of the vendors, bills of entry, bills of lading, commercial invoices, bank statements evidencing debits towards payments for this vendor and the like. Without taking these documents into consideration, the assessing officer concluded that the sources of remittance are unexplained on account of non-filing of reconciliation statements with Form-15CA/15CB. On account of failure to consider the documents submitted by the petitioner with regard to this variation, the impugned order calls for interference.

6. As regards expenses specified in the profit and loss account, it is evident from the material on record that the petitioner submitted sample invoices and stated that the documents are voluminous and that it is not possible to upload these documents. These assessing officer should have been provided an opportunity to the petitioner to submit these documents before confirming variations merely on the basis of expenses booked in the profit and loss account.

7. As regards sundry creditors, the petitioner failed to provide details of these creditors such as names, PAN, e-mail address or obtain confirmation letters from the creditors. Learned counsel for the petitioner submits that these details are currently available and would be submitted if an opportunity is provided.

8. On account of the fact that the petitioner failed to respond to multiple notices under Section 143(2) and Section 142(1), it is necessary to impose costs on the petitioner. In addition, in order to protect revenue interest, the petitioner shall pay a sum of Rs.15,00,000/- (Rupees Fifteen Lakhs only), which has been arrived at by bearing in mind the confirmed variation under the impugned order with regard to sundry creditors.

9. For reasons set out above, subject to the petitioner remitting the sum of Rs.15 lakhs towards income tax within three weeks from the date of receipt of a copy of this order and paying a sum of Rs.20,000/- (Rupees Twenty Thousand only) as costs to the Tamil Nadu State Legal Services Authority, within the aforesaid period, the impugned order is set aside and the matter is remanded to the first respondent for reconsideration. The

petitioner is permitted to file additional documents within 15 days from the date of receipt of a copy of this order. In order to enable the petitioner to upload the same, the respondents are directed to provide access to the portal. Upon receipt of the additional documents, the assessing officer is directed to provide a reasonable opportunity to the petitioner, including a personal hearing through video conference, and thereafter issue a fresh order within three months from the date of receipt of additional documents from the petitioner.

10. The Writ Petition is disposed of on the above terms. Consequently, the connected miscellaneous petitions are also closed.

19.06.2024

Index :No
Speaking
Neutral Case Citation : No

klt

To

1.Assessment Unit,
Income Tax Department,

National e-assessment Centre,
Delhi.

2.Income Tax Officer,
Non-Corporate Ward – 19(3),
Annex Building, 121, Aayakar Bhawan,
M.G. Road, Nungambakkam,
Chennai – 600 034.

SENTHILKUMAR RAMAMOORTHY,J

klt

W.P.No.15186 of 2024
and
W.M.P.Nos.16511 & 16513 of 2024

19.06.2024