IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.09.2024

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THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.Nos.22235 of 2021 and 7872 of 2022
and
W.M.P.Nos.23450 of 2021, 7868 and 7869 of 2022

Muktha Foundations Private Limited,
Rep by its Director,
Sanjay Karumanchi Narayanan,
S/o.Karumanchi Narayanan,
Aged about 53 years,
No.4, W-Block, 5th Main Road,
Anna Nagar,
Chennai – 600 040. ... Petitioner in both W.Ps.

Vs.

1.The Income Tax Officer,
National Faceless Assessment Centre,
Income Tax Department,
Ministry of Finance,
Room No.401, 2nd Floor, E-Ramp,
Jawaharlal Nehru Stadium,
Delhi – 110 003.

2.The Income Tax Officer,
Corporate Ward 4(1),
Aayakar Bhavan,
No.121, Uthamar Gandhi Salai,
Nungambakkam,
Chennai – 600 034. ... Respondents in both W.Ps

Prayer in W.P.No.22235 of 2021: Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorari, to call for the records in DIN:ITBA/AST/S/143(3)/2021-22/1035883894(1) dated 25.09.2021 on the file of the 1st respondent relating to A.Y.2018-19 and quash the same.

Prayer in W.P.No.7872 of 2022: Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorari, to call for the records in DIN:ITBA/PNL/F/270A/2021-22/1039679913(1) dated 12.02.2022 on the file of the 1st respondent for the Assessment Year 2018-19.

For Petitioner (in both W.Ps) : Mr.G.Baskar

For Respondents (in both W.Ps) : Mrs.S.Premalatha
Junior Standing Counsel

COMMON ORDER

By this common order, both these writ petitions are being disposed of.

2. In W.P.No.22235 of 2021, the petitioner has challenged the impugned Assessment Order dated 25.09.2021 passed for the Assessment Year 2018-2019.

3. In W.P.No.7872 of 2022, the petitioner has challenged the impugned Penalty Order dated 12.02.2022 passed under Section 270A of the Income Tax Act, 1961.

4. In case challenge to the impugned Assessment Order dated 25.09.2021 impugned in W.P.No.22235 of 2021 is allowed, W.P.No.7872 of 2022 challenging the Penalty Order dated 12.02.2022 passed under Section 270A of the Income Tax Act, 1961 pursuant to the impugned Assessment Order dated 25.09.2021 impugned in W.P.No.22235 of 2021 will have to be allowed.

5. The facts are not in dispute. The dispute pertains to the Assessment Year 2018-2019. The petitioner had been served with the Show Cause Notice dated 21.09.2021. The petitioner was to respond to the same by 23.59 hours on 24.09.2021. The petitioner has also responded to the same on 24.09.2021, as is evident from the e-proceedings acknowledgement dated 24.09.2021. The petitioner had also uploaded the aforesaid information well within the time stipulated in the said notice dated 21.09.2021. The respondents have however proceeded to pass the impugned order, wherein, it has been stated as follows:-

> "*12.A Show Cause Notice proposing the above addition was issued to the assessee on 21.09.2021. The compliance date was 24.09.2021. However, till date no response is received from the assessee. Hence, it is presumed that the assessee has no explanation to offer and the assessment is accordingly completed as above.*
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> *13.Assessed accordingly under Section 143(3) of the Act, 1961. Demand Notice and Challan after giving credit for prepaid taxes is issued. Interest under Section 234A, 234B, 234C and 234D, as applicable is charged. Notices for initiating penalty proceedings under Section 270A is issued separately.*"

6. In the counter affidavit, the respondents have stated as under:-

"20.In para No.20 of the affidavit, it is submitted that while the petitioner was awaiting for the video conferencing link and date, it was shocked to receive an order of assessment dated 25.09.2021 under Section 147 rws 144 wherein the books of the petitioner was rejected under Section 145(3) and Rs.2,60,05,406/- (8% of sale amount of Rs.32,50,67,574/-) was added to the income of the petitioner. The said order arbitrarily stated that the petitioner has not submitted any response till 24.09.2021 and hence it is presumed that the petitioner has no explanation further penalty under Section 270 was initiated for under reporting of income.

In this regard I state that it is seen from the case history notings that though the screen reflects. "Schedule/Summary of VC" since no response from petitioner received on 24.09.2021 before 10.30 AM ie., the date and time of hearing. Hence the FAO has rightly proceeded to complete the scrutiny assessment.

21.In para no.21 of the affidavit, the petitioner states that even though the impugned order is an appealable order, since the same was passed in gross violation of principles of natural justice, infraction of the provisions of Section 144B of the Act and the standard operating procedure for personal hearing framed by the Central Board of Direct Taxes, the petitioner is filing this present writ petition. The petitioner has stated that there is no "effective" alternative remedy in respect of the same but to approach this under Article 226 of the constitution of India. The Hon'ble Supreme Court in the decision in the case of M/s.Radhakrishnan Industries Vs. State of Himachal Pradesh (Civil Appeal No.1155 of 2021 dated 20.04.2021) has held that the jurisdiction under Article 226 shall be available even in cases where alternative *remedy is available provided there is violation of principles of natural justice. Following the said judgement, this Court in the case of All India Metals Vs. Alloy Vs. Assistant Commissioner (FAC) – WA.No.222 of 2021 dated 08.09.2021 has quashed an assessment order passed in violation of principles of natural justice.*

In this regard I state that the objection of the petitioner is totally not acceptable due to the reason that the petitioner was given adequate opportunities as under:

23.09.2019 143(2)
30.12.2020 142(1)
18.01.2021 142(1)
01.02.2021 Letter to Petitioner
22.02.2021 142(1)
17.03.2021 142(1)
14.06.2021 142(1)
20.08.2021 142(1)
03.09.2021 142(1)
21.09.2021 SCN Sent.

Hence the allegation of the petitioner that the principles of natural justice is not adhered is not acceptable."

7. A reading of the impugned order indicates that the Assessment order has been passed in a hurry perhaps with a view to avoid the assessment getting lapsed due to the limitation under the Act. Although the respondents cannot have found fault with as the respondents are constrained to pass orders within the time stipulated under Section 153 of the Act. At the same time, the principles of natural justice cannot be

casualty to sacrifice the rights of an assessee.

8. Therefore to balance the interest, the Court is inclined to quash the impugned order and remit the case back to the respondent to pass a fresh order on merits and in accordance with law and expeditiously as possible preferably within a period of three months from the date of receipt of a copy of this order. Needless to state, the petitioner shall be given an opportunity of being heard through Video Conferencing in accordance with Section 144B of the Act.

9. These Writ Petitions stand disposed of. No costs. Consequently, connected writ miscellaneous petitions are closed.

25.09.2024

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

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