IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.11.2024

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THE HON'BLE **MR JUSTICE C. SARAVANAN**

W.P.Nos.24037 and 24041 of 2021
and
WMP.Nos.25356, 25358, 25364, 25365 of 2021
and WMP.Nos.6166 & 6168 of 2022

W.P.No.24037 of 2021

eShakti.com Private Limited
Represented by its Managing Director
No:554/555, 3rd Floor
Capitale Building, Anna Salai
Teynampet, Chennai – 600 018. ...Petitioner.

Vs.

The Deputy Commissioner of Income Tax
Corporate Circle 1(1)
No:121, Mahatma Gandhi Road,
Nungambakkam, Chennai – 600 034. ...Respondent.

Prayer in WP.No.24037 of 2021: Writ Petition filed under Article 226 of the Constitution of India, to issue a writ of certiorari calling for the records of the respondent bearing order No:ITBA/AST/S/143(3)/2021-22/1036367388(1) dated 13.10.2021.

W.P.No.24041 of 2021

eShakti.com Private Limited
Represented by its Managing Director
No:554/555, 3rd Floor
Capitale Building, Anna Salai
Teynampet, Chennai – 600 018. ...Petitioner.

Vs.

The Deputy Commissioner of Income Tax
Corporate Circle 1(1)
No:121, Mahatma Gandhi Road,
Nungambakkam, Chennai – 600 034. ...Respondent.

Prayer in WP.No.24041 of 2021: Writ Petition filed under Article 226 of the Constitution of India, to issue a writ of certiorari calling for the records of the respondent bearing order No:ITBA/AST/S/143(3)/2021-22/1036367101(1) dated 13.10.2021.

In both WPs.

For Petitioner : Ms.N.S.Tanvi

For Respondent : Mr.B.Ramanakumar
Sr. Standing Counsel

COMMON ORDER

Heard Ms.N.S.Tanvi, learned counsel for the petitioner and Mr.B.Ramanakumar, learned Sr. Standing Counsel for the respondent.

2. By this common order both the writ petitions are being disposed of.

3. This is the second round of litigation before this Court. Earlier the petitioner has suffered two Assessment Orders both dated **26.12.2019** for the Assessment Years **2016-17** and **2017-18**. The said Assessment Order was passed without issuance of any notice and therefore, the petitioner had approached this Court in **WP.No.1260 of 2021** and **W.P.No.1264 of 2021**.

4. By an order dated **17.06.2021**, this Court had set aside both the Assessment Orders dated **26.12.2019** passed under **Section 143 (3)** of the **Income Tax Act, 1961** with a direction to the respondent to re-do the assessment within a period of sixteen (16) weeks from the date of receipt of the aforesaid order.

5. It is also stated that the said Assessment Order dated **26.12.2019** which stood quashed by the aforesaid Orders dated **17.06.2022** of this Court in **WP.No.1260 of 2021** and **W.P.No.1264 of 2021** was to be treated as a notice to the petitioner to be replied and order was to be passed within a period of sixteen

(16) weeks of the order.

6. It is the case of the petitioner that the petitioner had also responded on **27.07.2021** by way of reply. Thereafter, the petitioner was issued with a notice dated **01.10.2021**, wherein the petitioner was asked to reply on or before **06.10.2021**. The petitioner had also complied with the same by uploading the reply dated **27.07.2021** by reiterating its earlier stand.

7. It is the specific case of the petitioner that the respondent thereafter issued a further notice dated **12.10.2021** for the Assessment Year **2016-17** and thereafter proceeded to pass the impugned order for both the assessment years.

8. In the said notice, the hearing was fixed on **31.10.2021** at 11:00 am. It is the case of the petitioner that there is a manifest violation of principles of natural justice as the petitioner did not get sufficient opportunity to reply to the notice dated **12.10.2021**, wherein the new issues were also flagged for the assessment year **2016-17**. That apart, less than 12 hours were given to the petitioner to respond to the aforesaid notice dated **12.10.2021**.

9. Learned counsel for the respondent defends the impugned order stating that there is no violation of Principles of Natural Justice. It is therefore submitted that the present petitions are liable to be dismissed.

10. Having considered the submissions of the learned counsel for the petitioner and learned counsel for the respondent, the Court is of the view that indeed there is a violation of principles of natural justice.

11. The argument, that the order of this Court dated **17.06.2021** has not been complied with by time-line stipulated therein, cannot be countenanced as no prejudice has been caused to the petitioner on account of delay in passing the orders on **13.10.2021**. That apart the jurisprudence developed in service law on account of delay in passing order pursuant to the order dated **17.06.2021** of this Court in the earlier round of litigation.

12. It is made clear that the March of Law and the jurisprudence developed in the context of Service Law cannot be applied, lock stock and barrel in other branches of law, particularly in the tax matters. The offices are also burdened and it may not be possible for them to complete the assessment within the time. When such orders are to be passed, ideally its appropriate for the officers to seek for extension of time. However, failure to seek such extension cannot be a reason to abate the proceeding.

13. The impugned order which has been passed with such alacrity is liable to be quashed and these cases deserve to be remanded back to the

respondent to pass a fresh *de-novo* order. As the impugned orders stand quashed and the case is remitted back to the respondent to pass a fresh order as expeditiously as possible, preferably within a period of sixteen (16) weeks again from the date of receipt of copy of this order. No costs. Connected Writ Miscellaneous Petitions are closed.

08.11.2024

Index: Yes/No
Speaking Order/Non-Speaking Order
Neutral Citation Case: Yes/No
nst

To:
The Deputy Commissioner of Income Tax
Corporate Circle 1(1)
No:121, Mahatma Gandhi Road,
Nungambakkam, Chennai – 600 034.

C.SARAVANAN, J.

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