IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.08.2024

CORAM :

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.No.24848 of 2021
and
W.M.P.Nos.26142 and 26143 of 2021

Vendhar Movies,
New No.14, Old No.21,
7th Main Road, R.A.Puram,
Chennai – 600 028.
PAN: AAJFV9814A ... Petitioner

Vs.

1.The Assistant Commissioner of Income Tax,
Central Circle-1(3),
Income Tax Department,
Investigation Wing,
Room No.312, 3rd Floor,
New No.46, Mahatma Gandhi Road,
Chennai – 600 034.

2.The Principal Commissioner of Income Tax,
Central-1, Income Tax Department,
108, Nungambakkam High Road,
Chennai – 600 034. ... 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 of the Writ Petitioner/Assessee on the file of the first respondent to quash the impugned order dated 19.09.2021 passed under Section 147 read with Section 144 of the

Act for the Assessment Year 2013-2014 in DIN No.ITBA/AST/M/147/2021-2022/1035713883(1) for want of jurisdiction.

For Petitioner : Mr.A.S.Sriraman

For Respondents : Mr.A.N.R.Jayaprathap
Junior Standing Counsel

ORDER

This writ petition is of the year 2021.

2. The petitioner is before this Court and aggrieved by the impugned order dated 19.09.2021 passed by the first respondent for the Assessment Year 2013-2014.

3. By the impugned order, the assessment has been completed by the first respondent. Operative portion of the impugned order reads as under:-

> *"3.2 A show cause notice dated 13.09.2021 was issued, in this regard, inviting the assessee's objections on or before 17.09.2021. However, the assessee has not responded to this show cause notice. In the circumstances, it is concluded that the assessee has no objection to assessing the amount of Rs.27,15,48,014/- as 'business income'. Accordingly, the amount of Rs.27,15,48,014/- is added to the total income of the assessee as 'business income'.*
>
> *(+) Rs.27,15,48,014/-*
>
> *4. Disallowance u/s 40A(3) of the I.T.Act, 1961:*
>
> *4.1 It was observed from the ledger extract (enclosed to this order as Annexure-3) that the assessee has paid an amount of Rs.7,35,00,000/- in cash to Shri.S.R.Prabhu, who is the proprietor*

of M/s.Dream Warrior Pictures towards 'theatrical rights' purchase. This payment in cash attracts application of Section 40A(3) of the I.T.Act, 1961. Hence, the assessee was given a show cause notice dated 13.09.2021 inviting its objections, for application of Section 40A(3) on the payment of Rs.7,35,00,000/-, on or before 17.09.2021. However, the assessee has not responded to this show cause notice. In the circumstances, it is concluded that the assessee has no objection to assessing the amount of Rs.7,35,00,000/- under Section 40A(3) of the I.T.Act, 1961. Accordingly, the amount of Rs.7,35,00,000/- is added to the total income of the assessee under Section 40A(3) of the I.T.Act, 1961.

(+) Rs.7,35,00,000/-

Based on the above, the assessment is completed as under:

Income determined u/s.143(3) r.w.s.153A	*: Rs. 63,86,293/-*
Add : Disallowance as discussed in para 3	*: Rs.27,15,48,014/-*
Disallowance as discussed in para 4	*: Rs. 7,35,00,000/-*
Total Income	*: Rs.35,14,34,307/-*

The demand notice and tax computation sheet annexed to the order.

Penalty proceedings u/s.271(1)(c) is initiated separately."

4. The petitioner has challenged the impugned order on the ground that it has been passed in gross violation of principles of natural justice and that despite request for adjournment, the impugned order has been passed by the first respondent.

5. This writ petition is opposed by the respondents on the ground that the petitioner has an alternate remedy before the Appellate Commissioner under Section 246A of the Income Tax Act, 1961 and therefore this writ petition is

liable to be dismissed.

6. I have considered the arguments advanced by the learned counsel for the petitioner and the learned Junior Standing Counsel for the respondents.

7. A reading of the impugned order indicates that the petitioner's request for adjournment was not considered and thus the impugned order has been passed by the first respondent.

8. The impugned order has been passed by the first respondent during the time when the country was under intermittent lockdown due to outbreak of Covid-19 pandemic. Therefore, neither the petitioner nor the respondents can be found fault with.

9. Considering the overall facts and circumstances of the case and to balance the interest of the parties, I am inclined to set aside the impugned order dated 19.09.2021 and remit the case back to the respondents to pass orders on merits, within a period of four weeks from the date of receipt of a copy of this order.

10. The petitioner shall file a detail reply to the impugned order, which stands quashed, within a period of two weeks from the date of receipt of a copy of this order.

11. The impugned order which stands quashed shall be treated as addendum to the Show Cause Notice dated 13.09.2021 issued to the petitioner, which preceded the impugned order.

12. This Writ Petition is disposed of with the above observations and directions. No costs. Connected Writ Miscellaneous Petitions are closed.

19.08.2024

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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