IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 14.08.2024

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THE HON'BLE Mr. JUSTICE KRISHNAN RAMASAMY

W.P.Nos.22931 & 22935 of 2024
and
W.M.P.Nos.24982, 24991 & 24992 of 2024

Dynamic SS Engineering Construction Private Limited,
(PAN: AACCD3764D),
Rep by its Authorized Signatory,
Mr.P.Gunasekaran (Managing Director),
76/34, Amuthini Flats, Vinayagam Streets,
Virugambakam, Chennai 600 092, India.

... Petitioner in both petitions

Vs.

1.Principal Commissioner of Income Tax-1,
Income Tax Department-Room No.401,
Chennai 600 034.

2.Income Tax Officer,
Corporate Ward 1(3),
Income Tax Department,
Chennai 600 034.

3.National E-Assessment Centre,
Income Tax Department,
Delhi 110 003.

... Respondents in both petitions

Common Prayer:

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, to call for the records relating to the impugned order passed by the 1st respondent under Section 263 of the IT Act in ITBA/REV/F/REV5/2022-23/1051602664(1) dated 29.03.2023 for AY 2018-19 and impugned order issued by the 2nd respondent under Section 143(3) read with Section 263 of the IT Act in ITBA/GEA/M/263/2023-24/1062368878(1) dated 11.03.2024 for AY 2018-19 and to quash the same.

For Petitioner in both petitions : Mr.V.Abhinov

For Respondent in both petitions : Mr.B.Ramanakumar, Senior Standing counsel
for Mr.D.Prabhu Mukunth Arunkumar,
Junior Standing counsel

COMMON ORDER

These writ petitions have been filed challenging the impugned orders dated 29.03.2023 and 11.03.2024 passed by the 1st and 2nd respondents respectively.

2. Mr.B.Ramanakumar, learned Senior Standing counsel, takes notice on behalf of the respondents. By consent of the parties, the main writ petitions are taken up for disposal at the admission stage itself.

3. The learned counsel for the petitioner would submit that initially an order dated 21.01.2021 was passed under Section 143(1) of the Income Tax Act, 1961 (hereinafter call as "IT Act"). Thereafter, the 1st respondent has passed the impugned order dated 29.03.2023 under Section 263 of the IT Act, wherein, the aforesaid order was set aside and the matter was remanded back to the concerned Assessing Officer. The petitioner has participated in the proceedings effectively till then.

4. Further, he would submit that while re-considering the matter, the 2nd respondent has issued notices dated 06.02.024 and 13.02.2024, however, due to the misunderstanding between the petitioner and his consultant, the petitioner had neither filed reply nor participated in the

personal hearing before the respondents. Under these circumstances, the re-assessment order was passed by the 2nd respondent on 11.03.2024. Therefore, this petition has been filed by the petitioner seeking for one more opportunity to establish their case before the respondents.

5. In reply, the learned Senior Standing counsel appearing for the respondents would submit that in the present case, it is not that the impugned order came to be passed by the respondent-Department without providing sufficient opportunities to the petitioner. Since the petitioner has failed to file the reply and appear for personal hearing, the fault is only on the part of the petitioner. Hence, he requests this Court to dismiss the present petitions. Further, he would submit that the petitioner can very well avail the alternate remedy available to them by filing an appeal, where they can establish their case in accordance with law.

6. Heard the learned counsel for the petitioner and the learned Senior Standing counsel for the respondent and also perused the materials available on record.

7. In the present case, the original assessment order dated 21.01.2021 was set aside vide the impugned order dated 29.03.2023, whereby the matter was remitted back to the 2nd respondent. Thereafter, though the show cause notice was issued and opportunity of personal hearing was also granted by the 2nd respondent, the petitioner had neither filed any reply nor participated in the personal hearing and it was submitted by the petitioner that they were unable to present their case before the respondents due to the misunderstanding between the petitioner and their consultant. In such case, it appears that though the respondents had provided sufficient opportunities, due to the inaction on the part of the petitioner, they had failed to avail the said opportunities.

8. Therefore, it is clear that the petitioner themselves had given up their rights for personal hearing and filing of reply in the present case. However, normally, an Assessee will have two opportunities to present their case. One is before the Assessing Officer and another is before the Appellate Authority. The Appellate Authority will also have similar

power of the Assessing Officer to adjudicate the petitioner's case.

9. In the present case, the petitioner himself had voluntarily given up the rights of filing the reply and personal hearing before the Assessing Officer. Hence, once a person had given up his rights, he cannot claim it back as he lost his opportunity. In such situation, he has to avail the second opportunity to present their case before the Appellate Authority. Therefore, this Court is inclined to grant liberty to the petitioner to file an appeal before the concerned Appellate Authority.

10. At this juncture, it was submitted by the petitioner that the limitation to file the appeal before the Appellate Authority was expired. Therefore, the petitioner is directed to file their appeal before the concerned Appellate Authority within a period of 30 days from the date of receipt of copy of this order. In such case, the Appellate Authority shall consider the same on its own merits and in accordance with law by providing sufficient opportunity to the petitioner without pressing for limitation.

11. In the result, these writ petitions are dismissed. No cost. Consequently, the connected miscellaneous petitions are also closed.

14.08.2024

Speaking/Non-speaking order
Index : Yes / No
Neutral Citation : Yes / No
nsa

To

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