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W.P.No.24777 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.08.2024

CORAM :

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.No.24777 of 2021

and

W.M.P.Nos.26054 and 26056 of 2021

SKM Animal Feeds and Foods (India)
Private Limited,
Represented by its Managing Director
Dr.M.Chandrasekar

... Petitioner

Vs.

1.The Assistant Commissioner of Income Tax,
Circle-1,
No.15, Gandhiji Road,
Erode – 638 001.

2.The Additional Commissioner of Income Tax,
Erode Range,
No.15, Gandhiji Road,
Erode – 638 001.

3.The Additional/Joint/Deputy/Assistant
Commissioner of Income Tax,
Income Tax Officer,
National e-Assessment Centre, Delhi.

(R3 impleaded vide order of this Court
dated 22.11.2021 in W.P.No.24777 of 2021)

... Respondents



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Prayer: Writ Petition filed under Article 226 of the Constitution for issuance of a Writ of Certiorari, to call for the records in DIN:ITBA/AST/S/143(3)/2021-2022/1036093837(1) dated 30.09.2021 on the file of the first respondent relating to the Assessment Year 2018-2019 and quash the same.

For Petitioner : Mr.G.Baskar

For Respondents : Mr.A.P.Srinivas
Senior Standing Counsel

ORDER

The writ petition is of the year 2021.

2. The petitioner has challenged the impugned Assessment Order dated 30.09.2021 passed by the Assistant Commissioner of Income Tax (ACIT) Circle-I, Erode the first respondent for the Assessment Year 2018-2019 under Section 143(3) of the Income Tax Act, 1961 after the introduction of the Faceless Assessment with effect from 01.04.2021.

3. It is the case of the petitioner that originally the assessment was transferred to the National e-Assessment Centre and notices were issued by the National e-Assessment Centre, New Delhi. The petitioner had also complied



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with the queries raised by the National e-Assessment Centre. Further case of the petitioner is that in September 2021, the file was transferred to the first respondent and series of notices were issued to the petitioner under Section 142(1) of the Income Tax Act, 1961, to which also the petitioner complied with.

4. The learned counsel for the petitioner has drawn attention to a Show Cause Notice dated 27.09.2021 issued by the first respondent as Assistant Commissioner of Income Tax, International Taxation – Visakhapatnam, which was sent at 22.50 hours with a request to the petitioner to respond by 29.09.2021. It is further submitted that on the same date at about 23.03 hours same notice sent by the first respondent to which also, the petitioner replied.

5. It is submitted that though the impugned Assessment Order passed by the first respondent is dated 30.09.2021 for the Assessment Year 2018-2019 and has been deliberately sent an e-mail attachment even though all the communications of the first respondent and that of the National e-Assessment Centre were digitally signed.



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6. It is submitted that the impugned Assessment Order dated 30.09.2021 passed by the first respondent is non-est in law inasmuch as the time for completing the assessment had expired on 30.09.2021.

7. It is submitted that the impugned Assessment Order was not digitally signed and was instead sent as an attachment by e-mail on 01.10.2021 and therefore, it is time barred.

8. Learned counsel for the petitioner further submits that even otherwise the impugned Assessment Order is contrary to a circular dated 06.09.2021 bearing reference in F.No.225/97/2021/ITA-II. It is submitted that as per paragraph 2 of the above circular, the range head is required to be compulsorily involved in the finalization of the assessment of such cases transferred to first respondent as Jurisdictional Assessing Officer for which the provisions of Section 144A of the Income Tax Act, 1961 may suitably invoked.

9. It is submitted that the impugned Assessment Order has been passed in violation of the above circular and the impugned circular is also non-est in law inasmuch as it has been passed after the expiry of limitation period on



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30.09.2021 though it was dispatched through e-mail on 01.10.2021.

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10. Adding further, the learned counsel for the petitioner would submit that the impugned Assessment Order dated 30.09.2021 has been passed in a tearing hurry as the time for completing the assessment would have expired on 30.09.2021 after the Taxation and Other Laws (Relaxation & Amendment of Certain Provisions) ('TOLA') Act, 2020 extensions.

11. Earlier, the proceedings were under the jurisdiction of the National Faceless Assessment Centre (NFAC), New Delhi. However, midway, the assessment was transferred to the Jurisdictional Assessing Officer the first respondent herein.

12. It is further submitted that this was contrary to the circular issued by the Central Board of Direct Taxes (CBDT) dated 06.09.2021 bearing Ref.F.No.225/97/2021/ITA-II wherein, it has been clarified as follows:-

“2. The Jurisdictional Assessing Officer (JAO) shall complete the assessments/penalties in such cases as per the following broad contours to the extent technically feasible:-

A) All processes in cases transferred u/s 144B(8) of the Act/Clause 5(2) of Faceless Penalty



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Scheme, 2021 may be conducted electronically to the extent technically feasible, except in those cases where the assessee does not have e-filing account/registered e-mail to communicate electronically with JAO. For cases without digital foot print, the JAO shall endeavour to get the e-filing account of the assessee registered and then conduct the proceedings in an electronic manner.

- B) The request for personal hearings shall generally be allowed to the assessee with the approval of Range Head, mainly after the assessee has filed written submission to the show cause notice. Personal hearing may be allowed to the assessee preferably through Video Conference. If Video Conference is not technically feasible, personal hearings may be conducted in a designated area in Income Tax Offices. The hearing proceedings may be recorded.
- C) Use of Faceless processes such as VU for online verification, TU for technical inputs etc. may also be considered for non-faceless regime to the extent technically feasible.
- D) In order to have consistency with the unit concept in faceless regime, the Range Head may compulsorily be involved in the finalization of assessment of such cases transferred to JAO, for which the provisions of Section 144A of the Act may suitably be invoked. In penalties, the approval of Range Head is already embedded in Section 274(2) of the Act, over a specific monetary ceiling of 'penalty imposable'. Same may be adhered to.



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3. It is also clarified that in respect of such cases transferred, the JAO shall take into account the proceedings conducted so far under the faceless regime and proceed further as per the provisions of the Act and broad contours of modalities as indicated above.

4. This issues with the approval of Chairman, CBDT.”

13. That apart, the learned counsel for the petitioner would submit that although the impugned Assessment Order signed dated is 30.09.2021, there are adequate materials available in the file to indicate that the order indeed was not passed on 30.09.2021.

14. To substantiate the same, the learned counsel for the petitioner would draw attention to the e-filing portal. It is further submitted that the extracts from the e-filing portal would indicate that the impugned Assessment Order had been issued on 01.10.2021 and thus, presumption has been drawn that the order was passed after the limitation expired on 30.09.2021.

15. On the other hand, the learned Senior Standing Counsel for the respondents would submit that the impugned Assessment Order is well-reasoned and requires no interference. A reference is also made to Paragraph



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1.2 of the impugned Assessment Order. It reads as under:-

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“1.2 The return of income was selected for completed scrutiny through CASS and the notice u/s. 143(2) issued on 22.09.2019. Subsequently notices u/s.142(1) were issued time to time and the assessee also furnished the details. On verifying and totalling the list of sundry creditors given by the assessee, it is found that there is a difference in the liability towards sundry creditors.

In order to verify the same, show cause notice is given to the assessee for want of clarification with the evidences. In this respect the assessee filed the reply along with the list of creditors in order to reconcile the differences. On comparing the list of creditors between the list given on 14.01.2021 and 29.09.2021, it is observed that some of the parties appearing in the list given on 14.01.2021 has not appeared in the list given on 29.09.2021 and in the list given on 29.09.2021, the assessee had added some of the parties to reconcile the difference.”

16. It is further submitted that in absence of proper explanation, the impugned Assessment Order had been passed based on the available material. It is submitted that the petitioner has not been able to establish that the persons named were genuine Sundry Creditors of the petitioner. Hence, the impugned Assessment Order does not call for any interference.



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17. Learned Senior Standing Counsel for the respondents would submit that in any event, the petitioner has an alternate remedy under Section 246A of the Income Tax Act, 1961, before the Appellate Commissioner. Hence, prays for dismissal of the writ petition.

18. I have considered the arguments advanced by the learned counsel for the petitioner and the learned Senior Standing Counsel for the respondents. I have also perused the impugned Assessment Order and the documents to which, attention was drawn, particularly, the extracts from the e-filing portal depicting the movement of the documents.

19. *Prima facie*, it cannot be construed that the impugned Assessment Order was passed after 30.09.2021 as there is a presumption that the order would have passed on the said date. It is also stands confirmed that the order was emailed to the petitioner on the following date i.e., on 01.10.2021 as is evident from Page No.188 of the Typed Set of Papers.



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20. The order copy was also dispatched physically to the petitioner on 04.10.2021 and received by the petitioner on 05.10.2021. Therefore, it cannot be said/held that the assessment that was completed vide impugned Assessment Order dated 30.09.2021 was time barred.

21. At the same time, it is evident that the explanation of the petitioner in petitioner's representation dated 29.09.2021 has not been considered.

22. The assessment has been completed in a hurry as otherwise the assessment would have got time barred after 30.09.2021. Therefore, neither the petitioner nor the respondents can be found fault on account of the limitation, which would operate against the respondents.

23. To balance the interest of the parties, I am inclined to set aside the impugned Assessment Order dated 30.09.2021 and remit the case back to the respondents to pass orders on merits, within a period of six months from the date of receipt of a copy of this order.



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24. Needless to state, before passing such order, the petitioner shall be

heard.

25. This Writ Petition stands disposed of with the above observations.

No costs. Connected Writ Miscellaneous Petitions are closed.

09.08.2024

Index : Yes/No

Internet : Yes/No

Speaking Order/Non-Speaking Order

Neutral Citation : Yes/No

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C.SARAVANAN, J.

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