IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.01.2024

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THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P. Nos.24980 and 24993 of 2021
W.M.P. Nos.26296, 26299, 26302, 26304, 26307, 26312, 26313, 26314, 26316, 26317 of 2021 and 2700, 2702, 2704, 2706, 2941, 2942, 2943, 2944 of 2022

M/s.Efficient Management Consultants
(Represented by its Partner)
28, CIT Nagar, 1st Cross Street,
Nandanam, Chennai 600 035. .. Petitioner in both W.Ps

Vs.

1. The Income Tax Officer,
   National Faceless Assessment Centre, Delhi,
   E-Ramp, Jawaharlal Nehru Stadium,
   Delhi – 110 003.

2. Income Tax Officer,
   Non Corporate Ward – 1(2)
   Income Tax Department,
   121, Nungambakkam High Road,
   Chennai 600 034.

3. The Principal Commissioner of Income Tax, Chennai-1,
   Income Tax Department,
   121, Nungambakkam High Road,
   Chennai 600 034. ..Respondents in both W.P.s

PRAYER in W.P.No.24980 of 2021: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus to call for the records of the Writ Petitioner / Assessee on the file of the First Respondent to quash the impugned order dated 28.09.2021 passed u/s 147/144 read with Section 144B of the Income Tax Act, 1961 for the Assessment Year 2014-15 in DIN and Order No. ITBA/AST/S/147/2021-22/1035980448(1) and consequently direct the First Respondent to complete the fresh reassessment for the assessment year 2014-15 in directing to grant reasonable / sufficient opportunity of hearing.

PRAYER in W.P.No.24993 of 2021: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus to call for the records of the Writ Petitioner / Assessee on the file of the First Respondent to quash the impugned order dated 29.09.2021 passed u/s 147/144 read with Section 144B of the Income Tax Act, 1961 for the Assessment Year 2015-16 in DIN and Order No. ITBA/AST/S/147/2021-22/1036022741(1) and consequently direct the First Respondent to complete the fresh reassessment for the assessment year 2015-16 in directing to grant reasonable / sufficient opportunity of hearing.

For Petitioner in both W.Ps.	: Mr.A.S.Sriraman
For Respondents in both W.Ps.	: Mr.B.Ramanakumar Standing Counsel

COMMON ORDER

These writ petitions are filed challenging the orders dated 28.09.2021 and 29.09.2021 passed under Section 147/144 read with Section 144B of the Income Tax Act, 1961 (hereinafter referred to as "the Act") for the assessment years 2014-15 and 2015-16.

2.1. The petitioner in both these writ petitions is a partnership firm. It is submitted by the learned counsel for the petitioner that reassessment notice was issued under Section 148 of the Act on 19.03.2020 followed by a notice under Section 142(1) of the Act on 22.09.2020 by the 2nd Respondent. Reassessment under Section 147/144 read with Section 144 B of the Act, was completed on 28.09.2021 and 29.09.2021. It was also indicated that penalty under Section 271(1)(b) and 271(1)(c) of the Act would be initiated separately.

2.2. It is the case of the learned counsel for the petitioner that the notices were issued during the Covid-19 lock down period and they were unable to respond to the notices on account of technical glitches, they were thus not afforded reasonable opportunity. The impugned order is thus made in violation of principles of natural justice and liable to be set-aside.

3. The learned counsel for the respondents would submit that several notices were issued to the petitioner during the period 2020-21. As there was no response from the petitioner, an ex-parte assessment order was issued under Section 147 read with Section 144 of the Act.

4. The challenge to the impugned orders in both the writ petitions is on the limited premise that the opportunity that was extended was not real but illusory in view of the fact that there were technical glitches. In support thereof the petitioner had furnished series of press releases and meetings with Infosys on glitches relating to e-filing portal of the Income Tax Department. It was further submitted that the period in question relates to the lock down period due to Covid pandemic. It is submitted that every time an attempt was made to check the web portal only some random messages were available, thereby the petitioners were disabled from responding, which is not seriously disputed.

5. Considering the above submission, this Court finds merit in the submission of the learned counsel for the petitioner that the petitioner has not been granted a reasonable opportunity to respond to the notice in view of the technical glitches which is not disputed, thus the impugned order is made in violation of principles of natural justice and thus liable to be set-aside.

6. In the circumstances, the impugned orders are set-aside and the matters remanded back for continuing the proceedings from the stage of 142(1) notices.

7. These writ petitions are disposed of accordingly. No costs. Consequently, connected miscellaneous petitions are closed.

19.01.2024

Speaking (or) Non Speaking Order
Index:Yes/No
Neutral Citation: Yes/No
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To:

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MOHAMMED SHAFFIQ, J.

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