IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 23.09.2024
Coram
The Honourable **Mr.Justice Krishnan Ramasamy**

W.P.Nos.27005 & 27643 of 2024
and
W.M.P.Nos.29522, 29523, 30158 & 30159 of 2024

M/s. Southern Petro Chemical Industries,
Corporation Ltd.,
Rep. By its Authorized Signatory
SPIC House, 88 Mount Road,
Guindy, Chennai – 600 032.

...Petitioner in both W.Ps.

Vs.

The Deputy Commissioner of Income Tax/ACIT,
Central Circle -1 (3), Chennai,
No.320, M.G.Road, Nungambakkam,
Chennai – 600 034. ...Respondent in both W.Ps.

Prayer in W.PNo.27005 of 2024: Writ Petitions filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari to quash the Impugned Order passed by the Respondent under section 271(1)(c) of the Income Tax Act, 1961 dated 31.07.2024 in DIN:ITBA/PNL/M/271(1)(c)/2024-25/1067202174(1) for the Assessment Year 2006-07 in PAN. AAACS4668K.

Prayer in W.PNo.27643 of 2024 :- Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari to call for the records of the petitioner on the file of Respondent and quash the Impugned order passed by the Respondent under Section 271(1)(c) of the Income Tax act, 1961 dated 31.07.2024 in DIN:ITBA/PNL/M/271(1)(C)/2024-25/1067202191(1) for the Assessment year 2005-06 in PAN. AAACS4668K.

Appearance of the counsel in both W.Ps:-

For Petitioner	:	Mr.R.Venkatanarayanan for M/s. Subbaraya Aiyar Padmanabhan
For Respondent	:	Mr.A.N.R. Jayaprathap, Junior Standing Counsel

COMMON ORDER

Since the issue involved and the relief sought in both the Writ Petitions are identical in nature, the same were heard together and disposed of vide this common order.

2. With consent, the Writ Petitions are taken up for final disposal at the stage of admission itself.

3. The challenge in these Writ Petitions is to the impugned orders passed by the respondent under Section 271(1)(c) of the Income Tax Act 1961 (in short, 'the Act') dated 31.07.2024 for the Assessment Years 2005-

06 & 2006-07.

4. The brief facts of the case are as follows:-

i) Aggrieved against the assessment orders passed by the Assessing Officer for the AYs 2005-06; 2006-07, the petitioner filed an Appeal before CIT (Appeals) NFAC on 12.12.2011 and the said Appeal was partly allowed vide order dated 29.12.2022 & 30.12.2022, against which, the petitioner filed further Appeal before the Income Tax Appellate Tribunal (ITAT) and the ITAT vide order dated 10.01.2024, partly allowed the Appeal; that consequent to the order passed by ITAT, the Assessing Officer issued notice dated 19.07.2024, and called upon the petitioner to show cause as to why, order imposing penalty should not be made under Section 271(1)(c) of the Act, the petitioner, on receipt of said notice sought for two weeks, however, without granting sufficient time to the petitioner, the respondent passed order dated 30.07.2024 and the consequential order on 31.07.2024. Hence, the present Writ Petitions.

5. Mr.R.Venkatanarayanan, learned counsel for the petitioner would submit that pursuant to the orders passed by ITAT on 10.01.2024 for AYs 2005-06; 2006-07 respectively, notice under Section 274 read with 271(1)(c) dated 19.07.2024 was issued to the petitioner stating that ITAT has partially allowed the Appeals filed against the order of CIT(A) NFAC, and called upon the petitioner to show cause as to why, order imposing penalty should not be made under Section 271(1) (c) of the Act, and also asked the petitioner to appear in person, pursuant to which, the petitioner appeared in person, filed reply on 22.07.2024 and requested the respondent to grant two weeks time for filing reply, to which, the respondent issued letters dated 24.07.2024, stating that due to paucity of time, as the case is getting time barred on 31.07.2024, granted 5 days time to submit documentary evidence and though the petitioner sought time, the respondent passed orders giving effect order to the directions issued by CIT (Appeals) and ITAT on 30.07.2024, by rejecting the submission and details filed by the petitioner and very next date, i.e. on 31.07.2024 passed orders imposing penalty under Section 271 (1) (c) of the Act, dated 31.07.2024, which necessitated the petitioner to file present Writ Petitions. Therefore, the learned counsel contended that the impugned orders are liable to be set aside as the same suffer from violation of principles of natural justice.

6. Mr.A.N.R.Jayaprathap, learned Junior Standing Counsel, who takes notice on behalf of the respondent would submit that in terms of provision of the Income Tax Act, 1961, the respondent is supposed to pass the penalty order on or before six months and in the petitioner's case, the Appeals filed by the petitioner were partly allowed by the ITAT on 10.01.2024 and the date, on which, the order passed by ITAT is reckoned, the time period prescribed under the Act was about to expire on 31.07.2024, and though the petitioner has sought for two weeks' time, the respondent vide letter dated 24.07.2024, citing paucity of time to pass penalty orders, granted 5 days time, however, since the petitioner failed to utilize the opportunity granted, the respondent passed the order giving effect order to the directions issued by CIT (Appeals) and ITAT on 30.07.2024, by rejecting the submission and the details filed by the petitioner and very next date, i.e. on 31.07.2024, passed the penalty order (viz., the impugned order).

7. I have given due considerations to the submissions made on either side and perused the materials available on record.

8. On perusal of records, it is seen that aggrieved against the assessment orders passed by the Assessing Officer for the AYs 2005-06; 2006-07, the petitioner filed Appeals before CIT (Appeals) NFAC on 12.12.2011 and the said Appeals were partly allowed vide order dated 29.12.2022 & 30.12.2022, against which, the petitioner filed further Appeals before the Income Tax Appellate Tribunal (ITAT) and ITAT vide orders dated 10.01.2024, partly allowed the Appeals.

8.1 Thus, when the ITAT passed orders as early as on 10.01.2024, it is not known as to what prevented the respondent from acting in consequent to the order passed by ITAT immediately, rather than to wait till the fag end of six months' expiry time and to issue notice on one fine day, i.e., on 19.07.2024, by quantifying the penalty amount and calling upon the petitioner to pay the penalty amount, the petitioner, who has issued with such notice all of a sudden, sought for two weeks' time to putforth their contention and to file supportive documents, which the respondent refused to grant citing the expiry of time period as reason for such refusal.

8.2 Thus, it is clear that the respondent remained a mute spectator for nearly five months, right from the date, on which, the orders were passed by ITAT i.e., on 10.01.2024 and at the eleventh hour, the respondent issued notice dated 19.07.2024 and called upon the petitioner to show cause to why, penalty should not be imposed and though the petitioner appeared in person and sought time on two occasions, the respondent, without acceding to any of such request made by the petitioner, proceeded to pass orders, thereby, giving effect order to the directions issued by CIT (Appeals) and ITAT on 30.07.2024, by rejecting the submission filed by the petitioner and very next date, i.e. on 31.07.2024 passed the impugned orders imposing penalty under Section 271 (1) (c) of the Act, dated 31.07.2024, which is in violation of principles of natural justice. Hence, this Court is inclined to set aside the impugned orders.

9. Accordingly, this Court passes the following orders:-

(i) The impugned orders dated 31.07.2024 are set aside and the matters are remanded back to the respondent for fresh consideration.

(ii) The petitioner is directed to file all the documents available with them along with any additional reply, if any, within a period of three (3) weeks from the date of receipt of a copy of this order.

(iii) Thereafter, the respondent is directed to issue a notice granting 14 days for the personal hearing of the petitioner, on which date, it is made clear that the petitioner shall appear and produce the documents and thereafter, the respondent is directed to consider the same and pass final orders in accordance with law determining the penalty, in terms of the orders passed by the ITAT dated 10.01.2024 respectively.

10. In the result, the Writ Petitions are allowed. No costs. Consequently, connected Miscellaneous Petitions are closed.

23.09.2024

Speaking/Non-speaking order
Index : Yes / No
Neutral Citation : Yes / No
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Krishnan Ramasamy,J.,

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To
The Deputy Commissioner of Income Tax/ACIT,
Central Circle -1 (3)Chennai,
No.320, M.G.Road, Nungambakkam,
Chennai – 600 034.

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