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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.09.2024

CORAM :

THE HONOURABLE **MR. JUSTICE KRISHNAN RAMASAMY**

W.P.No.29079 of 2022
and
W.M.P.Nos.128362 and 28364 of 2022

K.S.Construction,
By Partner,S.Tamilmani,
1/17, A.M.Velampatti Village,
M.Velampatti post, Harur Taluk,
Dharmapuri- 635 305. ... Petitioner

Vs.

Assistant Commissioner of Income Tax,
National Faceless Assessment Center,
Delhi.
...Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, to issue a writ of certiorari calling for records of the respondent in DIN:ITBA/AST/S/144/2022-23/1045844895(1) dated 22.09.2022 passed u/s.144 r.w.s 144B of the Act.

For petitioner	:	Mr.T.Vasudevan
For respondent	:	Dr.B.Ramaswamy Senior Standing Counsel

<u>O R D E R</u>

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This writ petition is filed challenging the order 22.09.2022 passed by the respondent in DIN:ITBA/AST/S/144/2022-23/1045844895(1) dated 22.09.2022 passed u/s.144 r/w Section 144B of the Income TaxAct.

2. It is submitted by the learned counsel for the petitioner that the petitioner is a partnership firm and the petitioner filed the income tax return for A.Y.2020-21. In the revised return, the petitioner has claimed expenses of the interest paid to the partners and has filed the tax audit report. While so, on 29.06.202,1 his case was selected for scrutiny under CASS and notice under Section 143 (2) *ibid* was issued on the respondent on 29.06.2021. The respondent has sent several notices and reminder letters for certain details and clarifications and also a reminder compliance dated 25.08.2022. The respondent issued a letter on 16.09.2022 stating that faceless assessment proceedings were ongoing in the case of the petitioner and the same was received via speed post on 23.09.2022. As far as the notices sent to the petitioner are concerned, the petitioner was under an impression that the IT returns were accepted and therefore, they did not have any issues. Hence, he would submit that one more opportunity be provided to the petitioner to file his reply as well as to appear before the

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concerned authorities. He further submitted that the impugned order passed is against the principles of natural justice and hence, he prayed to set aside the impugned order.

3. Dr.B.Ramaswamy, Senior Standing Counsel for the respondent would strongly oppose the submissions of the petitioner. He would submit that in the present case, it is not one or two notices, but more than 8 notices have been sent to the petitioner and in spite of that the petitioner is referring to only about the 9th notice *viz.,* the last notice and submitted that the said notice was served subsequent to the impugned assessment order. The petitioner has not responded for 8 notices that were sent and only for the 9th notice he is making his statements. He further submitted that there is no trust on the submissions made by the petitioner and hence, he prayed for dismissal of this writ petition. However, in the event of this writ petition is being allowed by considering the request of the petitioner, the reply of the petitioner may be directed to be considered by imposing huge costs.

4. Considering the submissions of both sides and on perusal of

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records, the impugned assessment order passed was an *ex parte* order. There is no dispute on the said aspect. The issue is whether a number of opportunities was provided to the petitioner to file the reply as well as personal hearing. According to the respondents, almost 9 notices have been issued to the petitioner but the petitioner has referred to only about the 9th notice and submitted that the impugned assessment order was passed before the receipt of the notice by the petitioner. In the present case, they have sent notice via speed post apart from uploading the same in the E portal. The respondents could have waited for some time after the notice was served on the petitioner via speed post and then passed the impugned assessment order dated 22.09.2022.

5. Considering this aspect, this Court grants one more opportunity to the petitioner to file his reply and also for personal hearing subject to the condition that the petitioner pays huge costs.. Though, this Court is inclined to provide one more opportunity to the petitioner, the same shall be granted only by imposing costs of Rs.10,000/- payable to "The Principal Government Naturopathy Medical College and Hospital, Account No.7883022723, IFSC Code:IDIB000M157". The petitioner is further directed to file reply within three weeks from the date of opening of

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the E portal by the respondents and thereafter, the respondents are directed to provide 14 days time for personal hearing and then pass appropriate orders in accordance with law.

6. With the above said directions, this writ petition is disposed of. Connected W.M.Ps are closed. No costs.

30.09.2024

vca

Neutral Citation : Yes/No
Speaking order : Yes/No

To,

The Assistant Commissioner of Income Tax,
National Faceless Assessment Center,
Delhi.

KRISHNAN RAMASAMY.J,

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