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W.P.No.32560 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.02.2024

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THE HONOURABLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

W.P.No.32560 of 2023

&

WMP Nos.32160 & 32161 of 2023

Triumph International (India) Private Limited
No.240-B, Sengundram Village,
Singaperumal Koil – 603 204,
Kanchipuram District, Tamil Nadu
Represented by its Director
Shri. Murugan Selvaraj

... Petitioner

VS

The Assessment Officer,
National Faceless Assessment Centre,
Income Tax Department,
Ministry of Finance,
New Delhi.

... Respondent

PRAYER : Writ Petition filed under Article 226 of the Constitution of India to issue a writ of Certiorarified Mandamus to call for the records of the Respondent and quash the impugned order dated 26.09.2023 passed u/s. 143(3) r.w.s.144C(1) of the Act for AY 2020-21 in PAN:AABCT5775D in DIN: ITBA/AST/F/144C/2023-24/1056524145(1) and direct the Respondent to consider the response to SCN dated 19.09.2023 and also afford an opportunity of hearing through video conference.



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For Petitioner : Mr.R.v.Easwar, Senior Advocate
for Mr.S.P.Chidambaram

For Respondents : Mr.R.S.Balaji,
Senior Standing Counsel
Mrs.S.Premalatha,
Junior Standing Counsel

ORDER

The petitioner assails a draft assessment order under Section 144C(1) of the Income-tax Act, 1961 (the Income-tax Act).

2. The petitioner is engaged in the business of manufacture of apparel. The return of income of the petitioner was selected for Computer Aided Scrutiny and a notice under Section 143(2) of the Income-tax Act was issued to the petitioner on 29.06.2021. Upon receipt of a notice dated 25.08.2023 calling upon the petitioner to explain the discrepancy between the closing stock of lingerie for assessment year 2019-20 and the opening stock for assessment year 2020-21, the petitioner requested for further time by communication of 08.09.2023. The petitioner also requested for a personal hearing through video conference before completion of such assessment

<https://www.mhc.tn.gov.in> proceedings. Thereafter, a show cause notice dated 12.09.2023 was



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issued indicating that a variation is proposed with regard to the discrepancy in stock. Such show cause notice was replied to on 19.09.2023 by stating that the discrepancy had occurred on account of inadvertent omission to disclose goods-in-transit. The petitioner also indicated the value of both manufactured goods and traded goods in transit so as to explain the discrepancy indicated in the show cause notice. Significantly, by such communication, the petitioner indicated that it reserves its right for personal video conference hearing. The impugned draft assessment order came to be issued on 26.09.2023 in these facts and circumstances. It has been brought to my notice that an assessment order was issued thereafter on 23.11.2023.

3. Learned senior counsel for the petitioner took me through the documents adverted to above. He assails the draft assessment order on the ground of breach of principles of natural justice in more than one respect. By referring to the show cause notice, he pointed out that the variation in stock is indicated therein, but no quantification is provided. By contrast, he points out that the impugned order, at paragraph 3.2 thereof, provides for an addition of Rs.27,04,84,500/- to the total income of the assessee. With reference



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to the same paragraph, he points out that the expense incurred on lingerie in the previous assessment year was disallowed under the draft assessment order, whereas no opportunity was provided in such regard in the show cause notice preceding the draft assessment order. He also referred to clause (viii) of sub-section 6 of Section 144B to contend that the grant of hearing through video conferencing or video telephone is mandatory if a request for personal hearing is received. Since the reply to the show cause notice and the communication that preceded it contained a request for personal hearing, he submits that the impugned draft assessment order is vitiated by failure to provide such personal hearing.

4. These contentions were vigorously opposed by Mr.R.S.Balaji, learned senior standing counsel for the respondent. At the outset, he submits that the challenge is to a draft assessment order and that the petitioner had an alternative remedy by way of approaching the Dispute Resolution Panel. In order to substantiate the contention that this Court should decline to exercise jurisdiction under such circumstances, he relied upon the following judgments:



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1.Misse Dusseldorf India (P.) Ltd v.

Deputy Commissioner of Income-tax, Transfer Pricing Officer, (2010) 37 DTR 253 (Del.), particularly paragraphs 5 to 7 thereof.

2. Intimate Fashions (India) (P.) Ltd. v.

Joint Commissioner of Income-tax, Transfer Pricing Officer, [2010] 321 ITR 265 (Mad.)

3. HSBC Holdings PLC, Mumbai v.

Deputy Commissioner of Income-tax-1, W.P.No.17868 of 2019, judgment dated 20.04.2023.

5. His last contention was that the petitioner was provided sufficient opportunities to provide an explanation. He supports this contention by referring to notices issued by the respondent to the petitioner starting with the notice dated 29.06.2021.

6. The existence of an alternative remedy is a material consideration while deciding whether to exercise jurisdiction under

Article 226 but it is certainly not an embargo to the exercise of



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jurisdiction. One of the recognized circumstances in which jurisdiction may be exercised notwithstanding the existence of an alternative remedy is when principles of natural justice are breached. In fact, in paragraph 32 of the judgment of the High Court of the State of Telangana, this principle was recognised.

7. In the case at hand, the show cause notice dated 12.09.2023 specified the closing stock of lingerie for AY 2019-20 and the opening stock thereof for 2020-21. Beyond that, no quantification of the proposed addition to the total income of the assessee was indicated. In contrast, the impugned draft assessment order records as under:

“From the above it can be seen that value of closing stock is more by Rs. than the value of opening stock of previous assessment year and the assessment year under consideration. However, as noted from the financials of the assessee, the difference in numbers in closing and opening stock of Lingerie, of previous assessment year and the assessment year under consideration, in Trading as well as Manufacturing account the closing stock was found to be less by 180323 in



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numbers which may lead to the conclusion that the value of on lingerie about Rs.0.0665 which cannot be true. The less value shown by the assessee in opening stock of current year may lead to the conclusion that the assessee is making sales out of the books. In view of the same the prices of the Bra and Panties Triumph Brand where one brand name 'sloggi' was also found, and it is seen that the price of almost all items ranges from Rs.600/- to Rs.4,000/-. Since the assessee has not provided the requisite details, the assessee was asked to show cause also as to why not addition on estimate basis be made. The assessee has not replied to the show cause notice even, therefore, the estimate value of lingerie is taken at of Rs.1,500/- thus the value of missing closing stock of 180323 lingerie is taken at Rs.27,04,84,500/- which is added to the total income of the assessee. The assessee had shown these missing lingerie in the closing stock of previous assessment year which means that the assessee has claimed all expenses relating to these lingerie viz. raw material, manufacturing cost etc. The expense incurred on these lingerie also cannot be allowed as no corresponding income is shown by the assessee therefore an estimated



disallowance of expenditure of Rs.500/- per lingerie is also disallowed which comes to Rs.9,01,61,500/-."

8. The extract indicates clearly that the income-tax authorities checked the website of the petitioner and found the price range for lingerie of a particular brand 'sloggi'. Based on the price range of such brand, an estimated average price of Rs.1,500/- was taken as the unit price. On that basis, the total addition of Rs.27,04,84,500/- was arrived at. Since the show cause notice did not contain the above quantification of the addition, the petitioner was deprived of the opportunity to respond thereto. It is also significant to notice that expenditure to the extent of Rs.9,01,61,500/-, which was incurred in the previous year, was disallowed without putting the petitioner on notice with regard to such proposed disallowance in the above mentioned show cause notice.

9. Apart from the above, it should not be lost sight of that the petitioner had expressly requested for a personal hearing through video conferencing and the provision of such personal hearing is



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mandated under clause (viii) of sub-section 6 of Section 144B of the
Income-tax Act.

10. For all these reasons, the impugned draft assessment order calls for interference so as to provide a reasonable opportunity to the petitioner. Since an issue not raised earlier finds place in the draft assessment order and probably in the assessment order, it becomes necessary for the respondent to issue a fresh show cause notice or, in the alternative, for the draft assessment order to be treated as a show cause notice. Learned senior standing counsel urges that the latter course of action be adopted in case the Court is inclined to interfere.

11. Therefore, it is directed that the draft assessment order be treated as a show cause notice. In view of the interference with the draft assessment order, the assessment order dated 23.11.2023 does not survive. The petitioner is permitted to submit a reply to the draft assessment order (i.e. show cause notice) within a period of three weeks from the date of receipt of a copy of this order. Upon receipt thereof, the assessing officer is directed to provide a reasonable opportunity, including a personal hearing through video conferencing, and, thereafter, issue a fresh draft assessment order.



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WEB COPY 12. The writ petition is disposed of on the above terms.

Consequently, connected miscellaneous petitions are closed. No costs.

26.02.2024

Index : Yes / No

Internet : Yes / No

Neutral Citation : Yes / No

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To

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The Assessment Officer,
National Faceless Assessment Centre,
Income Tax Department,
Ministry of Finance,
New Delhi.



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SENTHILKUMAR RAMAMOORTHY J.

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