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W.P.No.35518 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 25.09.2024

Coram

The Hon'ble Mr.Justice Krishnan Ramasamy

W.P.No.35518 of 2023
and W.M.P.Nos. 35484 and 35486 of 2023

M.S.Mohamed Siddique & Co.,
Represented by its Partner,
Mr.M.S.Mohamed Siddiq,
19, VV Koil Street Periamet,
Chennai – 600 003.

...Petitioner

Vs.

1.The Assessment Unit/Verification unit/
Technical Unit/Review Unit
Income Tax Department,
New Delhi.

2.Income Tax Officer,
Non Corp Ward 5(1), Che
No.16, Greams Road, Chennai,
Tamil nadu – 600 006.

... Respondents

Prayer: This Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari, to call for the records on the file of the 1st respondent and quash the impugned order in ITBA/AST/S/147/2022-23/1050910037(1) dated 17.03.2023 passed u/s 147 r.w.s.144 r.w.s 144B of the Income-tax Act, 1961 for the AY 2018-19 by the 1st respondent as illegal and not in accordance with law.



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For Petitioner : Mr.R.Sivaraman

For Respondent : Dr.B.Ramaswamy
Senior Standing Counsel

ORDER

Challenging the order dated 17.03.2023 passed by the 1st respondent, the petitioner has filed the present Writ Petition.

2. The case of the petitioner is that the petitioner is a partnership firm established in the year 1999 and engaged in the business of warehousing services, operating from Chennai. The petitioner submits that a show cause notice under Section 148A(b) of the Act for the impugned AY 2018-19 was issued to the petitioner by the 2nd respondent on 31.03.2022 seeking to re-open the assessment for the A.Y.2018-2019. The petitioner submits that they have inadvertently failed to file their submissions with respect to show cause notice issued under Section 148A(b) of the Act.

3. Further, second show cause notice was issued by the 1st respondent on 06.03.2023. The petitioner filed reply to the said notice on 08.03.2023. Without affording an opportunity of personal hearing to the petitioner, the assessment order came to be passed on 17.03.2023.

4. Learned counsel for the petitioner fairly submitted that the petitioner has disclosed the sum of Rs.91,80,856/- in his return, but the return



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was filed belatedly in terms of second notice issued under Section 144b.

The respondent refused to accept the reply by considering the entire income as asset. The assessing officer passed the impugned order without considering the petitioner's reply dated 08.03.2023. He therefore, pleaded that an opportunity may be provided to the petitioner for personal hearing, setting aside the order passed by the 1st respondent.

5. Learned Senior Standing Counsel appearing for the respondent would submit that in the present case, two show cause notices were issued and the petitioner refused to file reply to the first show cause notice. Thereafter, reply to the second show cause notice was considered and the assessment order has been passed. Therefore, there is no merit in the submission of the petitioner. Hence, he prayed to dismiss the petition.

6. Heard the learned counsel for the petitioner and the learned Senior Standing counsel for the respondent and perused the materials available on record.

7. Admittedly, two show cause notices were issued by the 1st respondent in pursuance to Section 144(1)(9) and 144B(1)(12) and 131 of the Act. It is pertinent to note that no reply was filed by the petitioner for the first notice. Therefore, second notice was issued on 06.03.2023 by providing two days time for filing reply and within two days, the petitioner filed the reply.



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8. Now the issue is after considering the reply, the assessment officer decided to take entire receipt as shown in the ITR as income of the petitioner and decided to pass assessment order. On the other hand, the petitioner filed the returns taking 28% as profit out of the total receipt in terms of Section 44A of the Act. When the respondent rejected the reply of the petitioner and decided to take entire receipt as income and proceeded to pass the assessment order, the respondent ought to have afforded an opportunity of personal hearing to the petitioner.

9. However, on perusal of notice dated 06.03.2023, it has been stated as follows:

“3.c. If required, in addition to filing written reply you may request for personal hearing so as to make oral submissions or present your case. The request can only be made by clicking the Seek Video Conferencing button available against the SCN, in the view notices of this proceeding in the e-proceedings tab on e-filing portal. The request can be made only before expiry of compliance date and time through video conference.”

10. Reading the above clause makes it clear that though the respondent has given liberty to the petitioner to request for personal hearing, the petitioner failed to avail such an option. Therefore, the question of violation of



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natural justice will not arise. Hence, this Court is not inclined to entertain the present writ petition.

11. Accordingly, the writ petition is dismissed. However, liberty is granted to the petitioner to file an appeal subject to the payment of cost of Rs.10,000/- to the **Cancer Institute (Regional Cancer Centre), Adyar, Chennai – 600 020**, within a period of two(2) weeks from the date of receipt of a copy of this order and thereafter, the respondents are directed to dispose of the appeal within a period of thirty(30) days. No costs. Consequently connected miscellaneous petitions are closed.

25.09.2024

Speaking/Non-speaking order

Index : Yes / No

Neutral Citation : Yes / No

msv

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Krishnan Ramasamy,J.,

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