BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **22.04.2024**

CORAM:

THE HONOURABLE MR.JUSTICE **C.SARAVANAN**

W.P.(MD) No.9813 of 2024
and
W.M.P.(MD) Nos.8915 and 8916 of 2024

Tamil Nadu Viswakarma Mutual Benefit Nidhi Limited,
rep. By its Managing Director,
N.Nagarajan ... Petitioner

/vs./

The Assistant Commissioner of Income Tax,
Corporate Circle,
No.2, V.P.Rathinasamy Nadar Road,
Income Tax Department,
B.B.Kulam,
Madurai ... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari, calling for the records of the respondent in proceeding ITBA/AST/S/143(3)/2023-24/1063369231(1) dated 26.03.2024 and quash the same as illegal.

For Petitioner : Mr.S.I.Muthiah
For Respondent : Mr.N.Dilip Kumar
Standing Counsel

ORDER

Mr.N.Dilip Kumar, learned Standing Counsel takes notice for the respondent.

2.The petitioner is a Financial Company, who has business of receiving deposits from the depositors and lending of amounts to its depositors on interest. The petitioner had filed regular return of income under Section 139 of Income Tax Act, 1961 on 18.10.2022. Thereafter, the petitioner was issued with a show cause notice dated 18.03.2024. The above notice preceded the notices under Section 142(3) of the Income Tax Act, 1961 on 03.11.2023 followed by a notice dated 02.06.2023 and thereafter, two notices under Section 142(1) of the Income Tax Act, 1961 on 27.10.2023 and on 03.11.2023.

3.It appears that the petitioner has not properly replied to all the notices. The impugned order has been passed by the Assessing Officer on the ground that the time for passing the order will expire and therefore, in order to save the limitation, the impugned order has been passed. While the respondent cannot be faulted for passing the order in the absence of adequate materials available before him and in the absence of proper reply of the petitioner. The petitioner may have a case to make out. It is noticed that the impugned order has been passed on the ground that the petitioner has not furnished the documents within the stipulated period and therefore, adverse inference has to be drawn.

4.Considering the fact that the petitioner was not able to produce relevant documents, which has now culminated in the adverse order, which is impugned before this Court, this Court is of the view that the impugned order can be set aside and the case is remitted back to the respondent to pass a fresh order on merits and in accordance with law within a period of 6 months from the date of receipt of a copy of this order.

5.The petitioner is directed to give proper reply to the show cause notice dated 18.03.2024 within a period of 60 days from the date of receipt of a copy of this order. Thereafter, the respondent shall pass appropriate orders on merits and in accordance with law within the period stipulated above. It is needless to state that the petitioner shall be heard before a fresh order is passed in the *de nova* proceedings.

6.The Writ Petition stands allowed at the time of admission with the above directions. No costs. Consequently, connected Miscellaneous Petitions are closed.

22.04.2024

Index : Yes / No
Internet : Yes / No
mm

C.SARAVANAN, J.

mm

W.P.(MD) No.9813 of 2024

22.04.2024