BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **08.04.2024**

CORAM:

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

W.P.(MD) No.18465 of 2021
and
W.M.P.(MD) Nos.15237 to 15239 of 2021

Dinamalar,
represented by its Partner,
5D, Trivandrum Road,
Vannarpettai,
Tirunelveli 627 003 ... Petitioner

/vs./

1.The Assistant Commissioner of Income Tax,
Circle -1,
Income Tax Department,
Nellai City Centre,
Tiruchendur Road,
Rahamath Nagar,
Tirunelveli 627 001.

3.The Principal Commissioner of Income Tax -1,
Income Tax Department,
No.2 CR Building,
VP Rathina Swamy Nadar Road,
Bibikulam
Madurai 625 002. ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, to call for the records of the Writ Petitioner Partnership Firm on the file of the 1st Respondent to quash the impugned order dated 13.09.2021 passed u/s 147 r.w.s 144B of the Act for the Assessment year 2018-19 in ITBA/AST/S/147/2021-22/1035526674(1) and consequently direct the 1st respondent to complete the fresh assessment for the assessment year 2018-19 after granting reasonable/sufficient opportunity of hearing.

For Petitioner : Mr.A.S.Sriraman

For Respondents : Mr.N.Dilip Kumar
Standing Counsel

ORDER

The petitioner has filed this Writ Petition for a Certiorarified Mandamus to to quash the impugned order passed by the first respondent dated 13.09.2021 for the assessment year 2018-19 in ITBA/AST/S/147/2021-22/1035526674(1) and to direct the first respondent to complete the fresh assessment for the assessment year 2018-19 after granting reasonable/sufficient opportunity of hearing to the petitioner.

2.The petitioner was issued with a show cause notice dated 12.08.2021, wherein there was a proposal for adding the following amounts to the taxable income of the petitioner.

TOTAL INCOME

Particulars	Amount.(Rs.)
Total Income as per return of income	Rs. 67,86,48,640/-
Add: As per Para No. 6	Rs. 1,73,937/-
Add: As per Para No. 7	Rs. 6,05,608/-
Add: As per Para No. 8	Rs. 13,883/-
Total Assessed Income	Rs.67, 94 ,42,068/-

3.The petitioner was to respond to the aforesaid show cause notice on or before 16.08.2021 by 23.59 hours. The petitioner was thereafter served with another notice dated 13.08.2021. They called upon the petitioner to respond by 23.08.2021 by 23.59 hours. Since the petitioner was not ready with the reply, the petitioner requested for adjournment on 17.08.2021 in response to the earlier show cause notice dated 12.08.2021. In the adjournment letter, the petitioner has stated as follows:-

"Not able to seek adjournment since the tab says that adjournment is available only 7 days prior to 31st March 2021. request to grant us time till the month end to submit the objections to the proposed assessment. vide notice no ITBA/AST/F/147(SCN)/2021-22/1034827112"

4.Without giving the petitioner an opportunity to reply by granting adjournment, the second respondent has now passed the assessment order by adding a further sum of Rs.21,87,24,369/- towards addition under Section 68 of the Income Tax Act, 1961. Thus, the impugned order has been passed in violation of principles of natural justice. Therefore, it is liable to be interfered with under Article 226 of the Constitution of India.

5.Accordingly, the impugned order passed in ITBA/AST/S/147/2021-22/1035526674(1) dated 13.09.2021 for the assessment year 2018-2019 by the first respondent is quashed and the case is remitted back to the first respondent to pass fresh orders within a period of 90 days from the date of receipt of a copy of this order. It is made clear that the impugned order and the show cause notice shall be read compendiously and a reply to the same shall also be filed by the petitioner within a period of 30 days from the date of receipt of a copy of this order. The respondents are directed to enable the portal for receiving the reply from the petitioner.

6.The Writ Petition stands allowed, accordingly. No costs. Consequently, connected Miscellaneous Petitions are closed.

08.04.2024

Index : Yes / No
Internet : Yes / No
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C.SARAVANAN, J.

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W.P.(MD) No.18465 of 2021

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