

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO.1368 OF 2021

SPL Gold India Private Limited] ... Petitioner

Versus

Asstt. Commissioner of Income-tax,]
Central Circle 4(3), Mumbai & Anr.] ... Respondents

Dr. K. Shivaram, Senior Advocate i/b Mr. Rahul K. Hakani for Petitioner.
Mr. Suresh Kumar for Respondents.
Mr. Ashish Kumar Pandey, Deputy Commissioner of Income Tax, present.

CORAM :- K. R. SHRIRAM &
AMIT B. BORKAR, JJ.
DATE :- 28 OCTOBER, 2021

P. C. :-

1. Petitioner is impugning the Assessment Order dated 25/05/2021 passed under Section 143(3) of the Income Tax Act, 1961 (hereinafter referred as 'the Act') computing Petitioner's total income at Rs.114,57,33,424/- as against the returns of income filed by Petitioner declaring total income at Rs.Nil. This was for AY 2018-19.

2. According to Petitioner a notice under Section 142(1) dated 20/05/2021 was received on 21/05/2021 requiring Petitioner to submit various details by 25/05/2021. 22/05/2021 was 4th Saturday and

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23/05/2021 was a Sunday. Petitioner is based in Mumbai and during those days, there was a lockdown in Mumbai due to Covid-19 pandemic. Dr. Shivaram stated that notwithstanding this situation and being aware of the problem faced by Petitioner because the Assessing Officer also is based in Mumbai, time only up to 25/05/2021 was granted and it was an unreasonably short time. Dr. Shivaram submitted that the documents sought included details with respect to advances from customers above Rs.9 Lakhs including letter confirmation, copy of invoices, bank statement highlighting receipt of advances etc., bank books and bank account statements, item-wise stock register, month-wise stock movement summary, details of all sales and purchases of parties above Rs.5 Lakhs along with their ledgers, corresponding purchase invoices, delivery challan copy / import documents, stock register in Excel format and reconciliation with monthly purchases and sales made, details of bad debts etc. Dr. Shivaram stated that Petitioner would have required minimum one month to collect and collate the details sought and the compilation would be in excess of 1000 pages. Respondents, however, proceeded to pass the Assessment Order on 25/05/2021 making an addition of Rs.114.57 Crores to Petitioner's total income.

3. Respondents have filed an Affidavit-in-Reply through one Mr. Ashish Kumar Pandey affirmed on 22/07/2021. Mr. Suresh Kumar, on

instructions of Mr. Pandey who is also present in Court, informed the Court that due to inadvertence, certain errors have crept in the Affidavit-in-Reply and requested leave of the Court to withdraw the Affidavit-in-Reply with liberty to file a fresh Affidavit of an appropriate Officer. Since at the outset itself, Mr. Suresh Kumar brought to the notice of the Court the errors, we would grant leave to Mr. Suresh Kumar to withdraw the said Affidavit. As regards liberty prayed for to file a fresh Affidavit, we are not inclined to grant that liberty. This is because in our view, it would make no difference to the allegations contained in the Petition.

4. With the Assistance of Dr. Shivaram and Mr. Suresh Kumar, we have gone through the Petition and the documents annexed thereto. We have also considered the Assessment Order. It is true that between 20/05/2021 and 25/05/2021 there was a lockdown in Mumbai and 22/05/2021 and 23/05/2021 were holidays. Therefore, even with a superhuman effort, Petitioner would not have been able to file the huge number of documents called for in the short period granted and therefore, passing of the Assessment Order without granting sufficient time to Petitioner is certainly violative of the principles of natural justice. We are inclined to quash the Assessment Order dated 25/05/2021 which we hereby do. The matter is remanded for *de novo* consideration.

5. Dr. Shivaram states that response to the notice issued on 20/05/2021 will be filed within 2 weeks from today. Statement accepted.
6. The Assessing Officer may consider the submissions made by Petitioner along with the documents and pass such order as he deems fit in accordance with law after giving a personal hearing to the Petitioner in accordance with the Rules.
7. We also clarify that we have not made any observation on the merits of the case.
8. The time between 25/05/2021 till today is excluded for the purpose of calculating time limit for passing re-Assessment Order.
9. Petition disposed with no order as to costs.

(AMIT B. BORKAR, J.)

(K. R. SHRIRAM, J.)