

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 9TH DAY OF DECEMBER, 2021

BEFORE

THE HON'BLE MR.JUSTICE S.R.KRISHNA KUMAR

WRIT PETITION NO.21146 OF 2021 (T - IT)

BETWEEN:

TT STEEL SERVICE INDIA PVT LTD,
PLOT NO.33 & 34, BIDADI INDUSTRIAL AREA
RAMANAGARA TALUK
BENGALURU - 562 109
(REPRESENTED BY MR.JUNICHI TAKAMASU
S/O MR. HIROSHI TAKAMASU
AGED ABOUT 50 YEARS)

... PETITIONER

(BY SRI. NARENDRA KUMAR J JAIN &
SMT.GEETHA RANI K, ADVOCATES)

AND:

1. THE ADDITIONAL / JOINT / DEPUTY ASSISTANT/COMMISSIONER OF INCOME TAX, INCOME TAX OFFICER, NATIONAL FACELESS -ASSESSMENT CENTRE, MINISTRY OF FINANCE ROOM NO.401, 2ND FLOOR E-RAMP, JAWAHARLAL NEHRU STADIUM DELHI -110003.
2. THE DEPUTY COMMISSIONER OF INCOME TAX CIRCLE 7 (1)(1) BMTc BUILDING, KORMANGALA, BANGALORE-560095.
3. THE DISPUTE RESOLUTION PANEL (DRP) - 2, 4TH FLOOR, A-WING , KENDRIYA SADAN, 17TH MAIN, KORMANGALA, BANGALORE 560034

REPRESENTED BY SECRETARY-DRP-2).
... RESPONDENTS
(BY SRI E. I. SANMATHI, ADVOCATE)

THIS WRIT PETITION IS FILED UNDER ARTICLE 227 OF THE CONSTITUTION OF INDIA PRAYING TO QUASH AS FAR AS THE PETITIONER IS CONCERNED THE IMPUGNED ASSESSMENT ORDER DATED 15.11.2021 ISSUED BY THE LEARNED R1 U/S 143930 R.W.S 144C (3) R.W.S 144B FOR AY 2018-19 ENCLOSED IN ANNEXURE-A AND ETC.,

THIS WRIT PETITION COMING ON FOR PRELIMINARY HEARING IN 'B' GROUP, THIS DAY, THE COURT MADE THE FOLLOWING THROUGH VIDEO CONFERENCE :

ORDER

In this petition, the petitioner seeks quashing of impugned final assessment order at Annexure-A dated 15.11.2021, demand notice at Annexure-B dated 15.11.2021 and notice at Annexure-C dated 15.11.2021 and for other reliefs.

2. Heard learned counsel for petitioner and learned counsel for respondents.

3. In addition to reiterating the various contentions urged in the petition and referring to the documents produced by the petitioner, learned counsel for the petitioner invites my attention to the mandatory provisions of Section 144C of the Income Tax Act, 1961 (for short 'the I.T. Act') in order to

point out that the statutory scheme underlying the said provision clearly indicates that under sub-section (2), after the draft Assessment Order dated 29.09.2021 was issued to the petitioner, the petitioner had two options viz., either to file his acceptance as provided under sub-section (2)(a) or to file objections as per sub-section (2)(b) of the I.T. Act.

4. It is contention of the petitioner that the petitioner submitted his objections on 28.10.2021 to the Dispute Resolution Panel (DRP) within the prescribed period; in view of change in the mechanism of assessment being shifted to the faceless scheme coupled with the Covid-19 pandemic exigency, the petitioner could not intimate the Assessing Officer about filing of the objections before the DRP; however, on 12.11.2021, the Assessing Officer issued notice to the petitioner seeking clarification from him as to whether the petitioner had submitted his objections to the draft Assessment Order with the DRP. In response thereto, petitioner sent a reply dated 15.11.2021 intimating the Assessing Officer that petitioner had already submitted the objections to the draft Assessment Order on 28.10.2021 with the DRP within the prescribed period. In addition thereto,

petitioner also intimated the jurisdiction Assessing Officer by way of e-mail as well as physical submission about his filing objections to the draft Assessment Order.

5. It is the grievance of the petitioner that the despite the petitioner submitting his objections to the draft assessment order before the DRP within the prescribed period as well as intimating the same to the Assessing Officer in response to the clarification sought for by him coupled with the intimation submitted by the petitioner to the jurisdictional Assessing Officer, respondent No.1 - Assessing Officer has proceeded to pass the impugned assessment order dated 15.11.2021 without following the mandatory procedure prescribed in sub-sections (5) to (13) of Section 144C and without awaiting directions from the DRP as provided in the said provisions. It is also contended that by virtue of Government Notifications, circulars etc., as well as the orders passed by the Apex Court extending the period of limitation, the inability and omission, if any, on the part of the petitioner to file objections with the Assessing Officer ought to be condoned and a lenient view is to be taken and indulgence in this regard is to be shown in favour of the petitioner,

particularly when the petitioners had filed their objections before the DRP on 28.10.2021 within the prescribed period and the petitioner having intimated the same to the Assessing Officer prior to passing the impugned order. It is therefore contended that the impugned assessment order is violative of the aforesaid mandatory provisions of Section 144C, particularly, since the petitioner had filed his objections to the draft assessment order before the DRP within the prescribed period and intimated the same to the Assessing Officer and consequently, the impugned Assessment Order and consequential notice deserve to be quashed and the DRP be directed to conclude the proceedings after considering the objections of the petitioner pursuant to which the Assessing Officer is to be directed to pass appropriate orders as provided under Section 144C of the IT Act.

6. *Per contra*, learned counsel for the respondents submits that there is no merit in the petition and the same is liable to be dismissed.

7. As rightly contended by the learned counsel for the petitioner, the undisputed material on record clearly indicates that in response to the draft Assessment Order

dated 29.09.2021 issued to the petitioner, petitioner submitted objections before the DRP on 28.10.2021, within the prescribed period and intimated the same to the Assessing Officer on 15.11.2021 pursuant to clarification sought for by the Assessing Officer on 12.11.2021; the explanation offered by the petitioner as regards his inability and omission to file objections with the Assessing Officer earlier in addition to the DRP merits acceptance, particularly in view of the Government Orders, circulars etc. as well as the orders of the Apex Courts extending the period of limitation coupled with the intimation provided by the petitioner to the Assessing Officer as sought for by him prior to passing the Assessment Order. At any rate, the petitioner had chosen to exercise the option of filing objections to the draft Assessment Order warranting the DRP to proceed further before the Assessing Officer takes further steps as provided under sub-sections 5 to 13 to Section 144C. Under these circumstances, I am of the considered opinion that the impugned Assessment Order passed by respondent No.1- Assessing Officer without awaiting directions from the DRP, before whom the matter was pending pursuant to the petitioner filing his objections within the prescribed period is clearly arbitrary, illegal and

without jurisdiction or authority of law and the same deserves to be quashed and necessary directions are to be issued to the DRP as well as the Assessing Officer in this regard.

8. In the result, I pass the following:

ORDER

- (i) The petition is hereby allowed.
- (ii) The impugned final assessment order bearing No.ITBA/AST/S/143(3)/2021-22/1036959912(1) at Annexure-A dated 15.11.2021, demand notice bearing No.ITBA/AST/S/156/2021-22/1036959924(1) at Annexure-B dated 15.11.2021 and notice bearing No.ITBA/PNL/S/270A/2021-22/1036959921(1) at Annexure-C dated 15.11.2021 are hereby quashed.
- (iii) The Dispute Resolution Panel (DRP) is directed to conclude the proceedings by considering the objections filed by the petitioner, in accordance with law and

Section 144C of the Income Tax Act, 1961.

- (iv) Upon the DRP concluding the proceedings as provided under Section 144C referred to *supra*, respondent No.1 – Assessing Officer shall proceed further and pass appropriate orders in accordance with law.

SD/-
JUDGE

Nms/Bmc