

WP(MD)No.1631 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

DATED : 03.02.2022

CORAM

THE HON'BLE MR. JUSTICE M.SUNDAR

W.P(MD)No.1631 of 2022

and

W.M.P.(MD)No.1425 of 2022

The Ramco Cements Ltd.,
Represented by its Authorised Signatory
Mr.T.Mathivanan,
Ramamandiram,
Rajapalayam, Virudhunagar District – 626 117,
Tamil Nadu.

... Petitioner

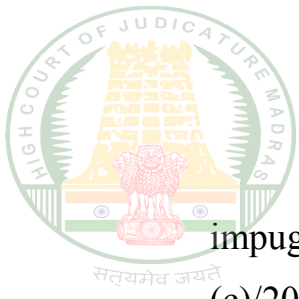
-Vs-

1.National Faceless Assessment Centre,
Represented by its Pr. Chief Commissioner
of Income Tax,
Ministry of Finance, Income Tax Department,
2nd Floor, Jawaharlar Nehru Stadium,
New Delhi – 110 003.

2.The Office of the Deputy Commissioner
of Income Tax,
Corporate Circle, Madurai.

... Respondents

Prayer: Writ Petition filed under Article 226 of Constitution of India, to issue a Writ of Certiorari, calling for the records of the 1st respondent in the



WP(MD)No.1631 of 2022

impugned order dated 17.01.2022 bearing No.DIN-ITBA/PNL/F/271(1)(c)/2021-22/1038807997(1) for the Assessment Year 2016-2017 passed under Section 271 (1)(c) of the Income Tax Act, 1961 and quash the same.

For Petitioner : Mr.P.J.Rishikesh

For Respondents : Mr.N.Dilipkumar,
Senior Standing Counsel for Income Tax.

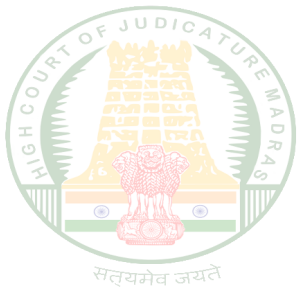
ORDER

Read this in conjunction with and in continuation of earlier proceedings made in the previous listings on 31.01.2022 which reads as follows:

'Proceedings in W.M.P.(MD)No.1423/2022 in W.P.(MD)No. 1631 of 2022 dated 31.01.2022:

In the captioned Writ Miscellaneous Petition [WMP] an order dated 17.01.2022 being an order under Section 271(1)(c) of the Income Tax Act, 1961 [penalty proceedings] has been assailed.

2.The aforementioned impugned order had been uploaded in the official website, the same has been downloaded from the official website and a photocopy of the hardcopy of the same has been placed on record. This also emanates from



WEB COPY



WP(MD)No.1631 of 2022

faceless assessment under Section 143(3) r/w. Section 144B & C of IT Act is the reason given in support of dispense with prayer.

3.Owing to the facts and circumstances of the case on hand this Court finds the reason given for the dispense with prayer to be acceptable. Therefore, captioned WMP is ordered as prayed for.'

Proceedings in W.P.(MD)No.1631 of 2022 dated 31.01.2022:

'In the captioned main writ petition an order dated 17.01.2022 bearing reference ITBA/PNL/F/271(1)(c)/2021-22/1038807997(1) [hereinafter 'impugned order' for the sake of convenience and clarity] made by the first respondent regarding assessment year 2016-17 [hereinafter 'said AY' for the sake of convenience and clarity] qua writ petitioner assessee has been assailed. This 17.01.2022 order imposing penalty has been made under Section 271(1)(c) of 'the Income Tax Act, 1961' [hereinafter 'IT Act' for the sake of brevity, convenience and clarity].

2.Short facts shorn of elaboration or in other words facts that are imperative for appreciating the proceedings before this Court are that an assessment order dated 22.06.2021 [page No.63 of paper book] came to be made regarding the assessee qua said AY; that this assessment order was preceded by the DRP [Dispute Resolution Panel]



WEB COPY



WP(MD)No.1631 of 2022

route; that this assessment order is pursuant to CASS [Computer Assisted Selection for Scrutiny]; that broadly three issues arose viz., a) Transfer Pricing [TP], b) Railway Siding Expenditure [as to which this is capital expenditure or revenue expenditure] and c) Dividend which according to assessee is exempt; that the matter turned heavily on Section 14-A of IT Act pertaining to disallowance; that the DRP had held in favour of assessee with regard to TP; that vide this 22.06.2021 assessment order based on the DRP directions, additions under Section 14-A of IT Act r/w. Rule 8D of Income Tax Rules, 1962 [hereinafter 'IT Rules' for the sake of brevity, convenience and clarity] was made in addition to the normal income as well as the book profit under Section 115JB of IT Act; that vide this assessment order it was made clear that penalty under Section 271(1)(c) of IT Act will be initiated for 'inaccurate particulars of income'; that post such assessment order a show cause notice [hereinafter 'SCN' for the sake of brevity] under Section 274 r/w. 271(1)(c) of IT Act being SCN dated 22.06.2021 came to be issued calling upon the writ petitioner assessee to respond on or before 01.07.2021; that the writ petitioner assessee responded on 30.06.2021 vide a detailed reply inter alia contending that this is not a case of inaccurate particulars of income; that what is of significance is in the concluding paragraphs the assessee had sought for a personal hearing; that the assessee thereafter preferred a statutory appeal before the jurisdictional Income Tax Appellate Tribunal [ITAT] ie., ITAT, Chennai assailing the



WEB COPY



WP(MD)No.1631 of 2022

assessment order dated 22.06.2021 and this statutory appeal before ITAT was made some time in August 2021; that thereafter the impugned order of first respondent came to be made; that the impugned order does not say anything about writ petitioner's request for personal hearing; that inter alia alleging violation of NJP [Natural Justice Principle] and contending that this is not a case of inaccurate particulars of income captioned main writ petition has been filed.

3.Mr.N.Dilip Kumar, learned Senior Standing Counsel for Income Tax who joined the virtual Court accepted notice on behalf of both the respondents. Learned Revenue Counsel contended that an alternate remedy is available to the writ petitioner by way of an appeal under Section 246 of IT Act. It was also contended that pendency of appeal as against the assessment order ie., statutory appeal before jurisdictional ITAT is no bar to make the penalty order under Section 271(1) (c) of IT Act. However regarding personal hearing learned Revenue Counsel requested for a short accommodation to get instructions and revert to this Court.

4.Therefore this Court deems it appropriate to record the position regarding the personal hearing point.

5.The personal hearing point urged by Mr.P.J.Rishikesh, learned Counsel representing the Counsel on record for writ petitioner is predicated on a Scheme dated



WEB COPY



WP(MD)No.1631 of 2022

12.01.2021 made by the Central Government in exercise of its powers under Section 274(2A) of IT Act which kicked in on and from 01.04.2020. The title of this Scheme is 'Faceless Penalty Scheme 2021' [hereinafter 'said Scheme' for the sake of convenience and clarity]. Section 274(2A) of IT Act reads as follows:

'274(2A). The Central Government may make a scheme, by notification in the Official Gazette, for the purposes of imposing penalty under this Chapter so as to impart greater efficiency, transparency and accountability by--

(a) eliminating the interface between the [income tax authority and the assessee or any other person] to the extent technologically feasible;

(b) optimising utilisation of the resources through economies of scale and functional specialisation;

(c) introducing a mechanism for imposing of penalty with dynamic jurisdiction in which penalty shall be imposed by one or more income-tax authorities.'

6. As regard said Scheme paragraphs 5, 11(3) and 12(ix) are relevant and the same are as follows:

'5. Procedure in penalty.— (1) The penalty in a case referred to in paragraph 3 shall be levied under this Scheme as per the following procedure, namely:___

(i) where any income-tax authority or the National



WEB COPY



WP(MD)No.1631 of 2022

Faceless Assessment Centre has, in a case,—

(a) initiated penalty proceedings and issued a show-cause notice for imposition of penalty; or

(b) recommended initiation of penalty proceedings, it shall refer such case, in the form specified in clause (viii) of paragraph 12, to the National Faceless Penalty Centre;

(ii) the National Faceless Penalty Centre shall in a case, where reference has been received as per clause (i), assign such case to a specific penalty unit in any one of the Regional Faceless Penalty Centres through an automated allocation system;

(iii) where in a case assigned to a penalty unit, initiation of penalty proceedings has been recommended, such unit, after examination of the material available on record, may decide to,—

(a) agree with the recommendation and prepare a draft notice calling upon the assessee or any other person, as the case may be, to show cause as to why penalty should not be levied under the relevant provisions of the Act; or

(b) disagree with the recommendation, for reasons to be recorded in writing, and send such draft notice or the reasons, as the case may be, to the National Faceless Penalty Centre;

(iv) the National Faceless Penalty Centre shall upon receipt of the draft notice or reasons referred to in clause (iii) from the penalty unit,—



WEB COPY



WP(MD)No.1631 of 2022

(a) serve the show-cause notice, as per the draft referred to in sub-clause (a) of clause (iii), upon the assessee or any other person, as the case may be, specifying the date and time for filing a response; or

(b) not initiate penalty in cases referred to in sub-clause (b) of clause (iii);

(v) where in the case assigned to a penalty unit, penalty proceedings are already initiated, such unit shall prepare a draft notice calling upon the assessee or any other person, as the case may be, to show cause as to why penalty should not be levied under the relevant provisions of the Act and send such notice to the National Faceless Penalty Centre;

(vi) the National Faceless Penalty Centre shall serve the show-cause notice, as per draft referred to in clause (v), upon the assessee or any other person, as the case may be, specifying the date and time for filing a response;

(vii) the assessee or any other person, as the case may be, shall file a response to the show-cause notice, referred to in sub-clause (a) of clause (iv) or in clause (vi), within the date and time specified therein, or such extended date and time as may be allowed on the basis of an application made in this behalf, with the National Faceless Penalty Centre;

(viii) where response is filed by the assessee or any other person, as the case may be, the National Faceless Penalty Centre shall send such response to the penalty unit,



WEB COPY



WP(MD)No.1631 of 2022

and where no such response is filed, inform the penalty unit;

(ix) the penalty unit may make a request to the National Faceless Penalty Centre for, –

(a) obtaining further information, documents or evidence from any income-tax authority or the National Faceless Assessment Centre; or

(b) obtaining further information, documents or evidence from the assessee or any other person; or

(c) seeking technical assistance or conducting verification;

(x) the National Faceless Penalty Centre shall, upon receipt of request, referred to in sub-clauses (a) or (b) of clause (ix), issue appropriate notice or requisition to the income-tax authority or the National Faceless Assessment Centre or the assessee or any other person, as the case may be, to submit such information, documents or evidence, as may be specified by the penalty unit, specifying the date and time for furnishing a response;

(xi) the income-tax authority or the National Faceless Assessment Centre or the assessee or any other person, as the case may be, shall furnish a response to the notice or requisition, as referred to in clause (x), within the date and time specified therein, or such extended date and time as may be allowed on the basis of an application made in this behalf, to the National Faceless Penalty Centre;



WEB COPY



WP(MD)No.1631 of 2022

(xii) where a request for conducting of certain enquiry or verification or seeking technical assistance has been made by the penalty unit, the National Faceless Penalty Unit shall send such request to the National Faceless Assessment Centre specifying a date and time for submitting a report;

(xiii) where response to notice referred to in clause (x) is filed by the income-tax authority or the National Faceless Assessment Centre or the assessee or any other person, as the case may be, the National Faceless Penalty Centre shall send such response to the penalty unit, and where no such response is filed, inform the penalty unit;

(xiv) where a report in response to request referred to in clause (xii) is received by the National Faceless Penalty Centre, it shall send such report to the penalty unit, and where no such report is received, inform the penalty unit;

(xv) the penalty unit shall, after considering the material on record including response furnished, if any, as referred to in clauses (viii) and (xiii) or report, if any, as referred to in clause (xiv), propose for,—

(a) imposition of the penalty and prepare a draft order for such imposition of penalty; or

(b) non-imposition of the penalty, for reasons to be recorded in writing and send the proposal along with such draft order or reasons, as the case may be, to the National Faceless Penalty Centre;



WEB COPY



WP(MD)No.1631 of 2022

(xvi) the National Faceless Penalty Centre shall examine the proposal, as referred to in clause (xv), in accordance with the risk management strategy specified by the Board, including by way of an automated examination tool, whereupon it may decide, -

(a) in a case where imposition of penalty has been proposed, to pass the penalty order as per draft order referred to in sub-clause (a) of clause (xv), and serve a copy thereof upon the assessee or any other person, as the case may be; or

(b) in a case where non-imposition of penalty has been proposed, not to impose penalty under intimation to the assessee or any other person, as the case may be; or

(c) assign the case to a penalty review unit in any one of the Regional Faceless Penalty Centres through an automated allocation system, for conducting review of such proposal;

(xvii) the penalty review unit shall review the proposal of penalty unit, as referred to in clause (xv), whereupon it may concur with, or suggest modification to, such proposal, for reasons to be recorded in writing, and intimate the National Faceless Penalty Centre;

(xviii) where the penalty review unit concurs with the proposal of penalty unit, the National Faceless Penalty Centre shall follow the procedure laid down in sub-clause (a) or sub-clause (b) of clause (xvi);



WEB COPY



WP(MD)No.1631 of 2022

(xix) where the penalty review unit suggests modification to the proposal in sub-clause (a) or sub-clause (b) of clause (xv), the National Faceless Penalty Centre shall assign the case to a specific penalty unit, other than the penalty unit referred to in clause (xv), in any one of the Regional Faceless Penalty Centres through an automated allocation system;

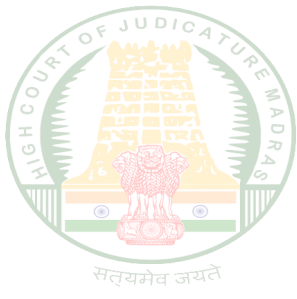
(xx) where the case is assigned to a penalty unit, as referred to in clause (xix), such penalty unit, after considering the material on record including suggestions for modification and reasons recorded by the penalty review unit,—

(a) in a case where the modifications suggested by the penalty review unit are prejudicial to the interest of assessee or any other person, as the case may be, as compared to the proposal of the penalty unit under clause (xv), shall follow the procedure laid down in clauses (v) to (xiv) and prepare a revised draft order for imposition of penalty; or

(b) in a case where the modification are not prejudicial to the interest of assessee or any other person, as the case may be, shall prepare a revised draft order for imposition of penalty; or

(c) may propose non-imposition of penalty, for reasons to be recorded in writing, and send such order or reasons to the National Faceless Penalty Centre;

(xxi) upon receipt of revised draft order from the penalty unit, as referred to in clause (xx), the National Faceless Penalty Centre shall pass the penalty order as per



WEB COPY



WP(MD)No.1631 of 2022

such draft and serve a copy thereof upon the assessee or any other person or not impose penalty under intimation to the assessee or any other person, as the case may be;

(xxii) where in a case, as referred to in sub-clause (a) or (b) of clause (i), the National Faceless Penalty Centre has passed a penalty order, or not initiated or imposed penalty, as the case may be, it shall send a copy of such order or reasons for not initiating or imposing penalty to the income-tax authority, referred to in clause (i) or the National Faceless Assessment Centre, as the case may be, for such action as may be required under the Act.

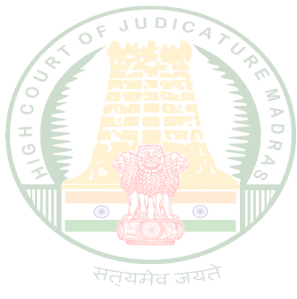
(2) Notwithstanding anything contained in subparagraph (1), the Principal Chief Commissioner or the Principal Director General, in charge of the National Faceless Penalty Centre, may at any stage of the penalty proceedings, if considered necessary, transfer such proceedings to the income-tax authority or the National Faceless Assessment Centre having jurisdiction over the assessee or any other person, in whose case the penalty proceedings are initiated, with the prior approval of the Board.

11.No personal appearance in the Centres or Units.—

(1)

(2)

(3) The Chief Commissioner or the Director General, in charge of the Regional Faceless Penalty Centre, under



WEB COPY



WP(MD)No.1631 of 2022

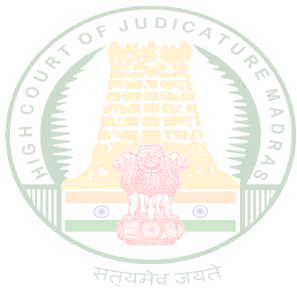
which the concerned penalty unit is set up, may approve the request for personal hearing, as referred to in sub-paragraph (2), if he is of the opinion that the request is covered by the circumstances laid down under clause (ix) of paragraph 12.

12. Power to specify format, mode, procedure and processes.— *The Principal Chief Commissioner or the Principal Director General, in charge of the National Faceless Penalty Centre shall, with the approval of Board, lay down the standards, procedures and processes for effective functioning of the National Faceless Penalty Centre, the Regional Faceless Penalty Centre, the penalty unit and the penalty review unit set-up under this Scheme, in an automated and mechanised environment, including format, mode, procedure and processes in respect of the following, namely:*

(i) to (viii)

(ix) circumstances in which personal hearing may be approved as per sub-paragraph (3) of paragraph 11.'

7. A careful perusal of sub-paragraph 3 of paragraph 11 read with Paragraph 12(ix) brings to light that the assessee can ask for personal hearing in a penalty proceedings but whether such request is to be approved ie., whether personal hearing has to be given is a decision which has to be taken by the Chief Commissioner or Director General in charge of the Regional Faceless Penalty Centre. Therefore there is a provision for personal hearing but it is not statutorily



WEB COPY



WP(MD)No.1631 of 2022

imperative in every case in which an assessee asks for personal hearing. It is at the discretion of these two authorities.

8. This takes us to the question as to how the discretion has to be exercised by these two authorities. Paragraph No.12 talks about these two authorities (with the approval of the Board) laying down standards, procedures and processes for effective functioning of National Faceless Penalty Centre. The reference to 'Board' is an obvious reference to Central Board of Direct Taxes [CBDT] [paragraph 2(vi) of said Scheme]. This takes us to the question as to whether such standards, procedures and processes have been laid down. This Court is informed that for faceless assessment inter alia under Section 144B a SOP [Standard Operating Procedure] had been put in place.

9. Learned Revenue Counsel seeks time to ascertain the following and revert to this Court;

a) Whether standards, procedures and processes for effective functioning of National Faceless Penalty Centre have been put in place with the approval of CBDT.

b) The standards, procedures and processes put in place for assessment qua faceless assessment inter alia under Section 144B of IT Act.

10. Registry to show the name of learned Revenue Counsel in the next listing.



WEB COPY



WP(MD)No.1631 of 2022

11.As the Revenue Counsel requests for time till Thursday [03.02.2022] to get instructions and revert to this Court, there shall be an order of interim stay as prayed for in captioned W.M.P.(MD)No.1425 of 2022 till the next listing.

12.List in the admission board ie., motion list on 03.02.2022.'

2. Pursuant to the aforementioned proceedings captioned matter is before me today. Mr.P.J.Rishikesh, learned counsel representing the counsel on record for writ petitioner, Mr.N.Dilipkumar, learned Senior Standing Counsel for Income Tax on behalf of the respondents (Revenue Counsel) are before this virtual Court.

3. Owing to the short point in the captioned matter, main writ petition was taken up with the consent of learned counsel on both sides.

4. Before proceeding further, this Court makes it clear that the short forms and short references used in the earlier proceedings made in the listing on 31.01.2022 will continue to be used in the instant order also. To



WP(MD)No.1631 of 2022

be noted, the aforementioned proceedings of this Court dated 31.01.2022 shall be read as an integral part and parcel of this order.

5. Adverting to paragraph 9 of the aforementioned earlier proceedings, learned Revenue Counsel submits that instructions with specificity on the same are awaited but the main matter can be disposed of leaving those two aspects open. The reasons are, a) the writ petitioner assessee has asked for a personal hearing vide 30.06.2021 objections b) this personal hearing is not a matter of right but it is the discretion of the Chief Commissioner or the Director General in charge of the Regional Faceless Penalty Centre and c) the impugned order does not say anything about whether the request for personal hearing was acceded to or not.

6. The simple point now is writ petitioner's request for personal hearing will be considered in accordance with the said scheme more particularly paragraphs 5, 11(3) and 12(ix) thereat. Therefore, the following order is passed:

a) the impugned order order dated 17.01.2022
bearing No.DIN-ITBA/PNL/F/271(1)(c)/ 2021-22/

17/20



WEB COPY



WP(MD)No.1631 of 2022

1038807997(1) made by the first respondent is set aside solely on the ground that a decision regarding the writ petitioner/assessee's request for personal hearing has not been decided one way or the other in accordance with the said scheme;

b) though obvious, it is made clear that this Court has not expressed any view or opinion on the merits of the matter and all questions are left open;

c) the first respondent shall now proceed from the stage of objections dated 30.06.2021, decide on the request for personal hearing and complete the penalty proceedings *inter alia* under Section 271(1)(c) of IT Act and pass orders afresh as expeditiously as the business of the first respondent would permit and in any event within 12 weeks from today i.e., on or before 28.04.2022;



WEB COPY



WP(MD)No.1631 of 2022

d) The two quires raised in paragraph 9 of the proceedings dated 31.01.2022 are left open and decision regarding the personal hearing will be taken in accordance with standards, procedures and processes if any.

7. Captioned writ petition is disposed of in the aforesaid manner. Consequently captioned WMP is disposed of as closed. There shall be no order as to costs.

03.02.2022

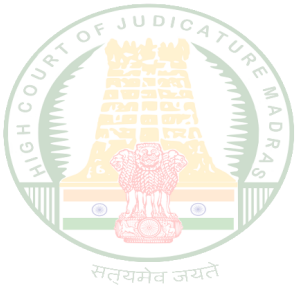
Index : Yes/No
Internet : Yes /No

vsm

Note :

In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate / litigant concerned.

19/20



WEB COPY



WP(MD)No.1631 of 2022

M.SUNDAR, J.

vsm

To

- 1.The Appellate Deputy Commissioner (ST),
Commercial Taxes Buildings,
Palayamkottai,
Tirunelveli.
- 2.The State Tax Officer,
Thiruchendur.

W.P(MD)No.1631 of 2022
and W.M.P.(MD)No.1425 of 2022

03.02.2022

20/20