IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 27.01.2015

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THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P.Nos.1776 to 1791 of 2015
and M.P.Nos.1 and 1 of 2015

WP.No.1776 of 2015

NARESH PRASAD AGARWAL
Proprietor- SHIV SAHAI & SONS
1, Narasimha Dasari Lani
60-61, N.S.C.Bose Road
Chennai -600 079 ..Petitioner in W.P.1776 to 1789/15.

M/s. SHW SAHAI & INDIA Lit.,
rep. by its Managing Director,
Mr.Naresh Prasad, Aagarwai, ..Petitioner in W.Ps. 1790 & 1791/2015

Vs.

The Commissioner of Income Tax (Appeals) – (C)-II
Office of the Income Tax Department,
108, M.G.Road, Nungambakkam,
Chennai – 600 034 ..Respondent in all the WPs.

WP.1771 to 1782 of 2015: Writ Petitions filed under Article 226 of the Constitution of India to issue a Writ of mandamus directing the respondent to provide an opportunity in the Appeal dated 09.4.2014 filed by the petitioner to cross examine the concerned MMTC Officials pertaining to the income assessed for the Assessment year 2006-2007 2007-2008, 2008-2009, 2009-2010, 2010-2011, 2011-2012, 2012-2013 respectively.

W.P.1783 to 1791 of 2015:

Writ petitions filed under Article 226 of this constitution of India to issue a writ of Mandamus directing the respondents to consider the preliminary issue the appeal the appeal dt. 9.4.2014 filed by the petitioner with regard to the Assessment year.

2006-2007 (W.P.No.1783/2015)
2007-2008 (W.P.No.1784/2015)
2008-2009 (W.P.No.1785/2015)
2009-2010 (W.P.No.1786/2015)
2010-2011 (W.P.NO.1787/2015)
2011-2012 (W.P.No.1788/2015)
2012-2013 (W.P.No.1789/2015)
2011-2012 (W.P.No.1790/2015)
2012-2013 (W.P.No.1791/2015)

respectively on to whether block assessments can be made based on the materials and documents which did not form part of the search conducted on 6.1.2012 and 2.3.2012 under section 132 of the Income Tax Act 1961 on the basis of the so called payments said to have been made by MMTC.

For Petitioner :Mr.Yashod Vardhan
Senior Counsel for
M/s. Mcgan Law Firm

For Respondent :Mr.S.Rajasekar Jostel

C O M M O N   O R D E R

Writ Petition Nos.1776 to 1782 of 2015 have been filed for a mandamus directing the respondent to provide an opportunity in the Appeal dated 09.4.2014 filed by the petitioner to cross-examine the concerned MMTC Officials pertaining to the income assessed for the Assessment years 2006-2007 to 2012 -2013 on the basis of the so called payments said to have been made by MMTC.

2. Writ Petition Nos.1783 to 1791 of 2015 have been filed for a mandamus directing the respondent to consider the representation dated 24.6.2014 and decide the preliminary issue in the appeal dated 09.4.2014 filed by the petitioner with regard to the Assessment Year 2006 - 2007 as to whether the block assessment can be made based on the materials and documents which did not form part of the search conducted on 06.01.2012 and 2.3.2012 under Section 132 of the Income Tax Act, 1961.

3. The petitioner has preferred an appeal before the Commissioner of Income Tax, Chennai, wherein he raised several pleas including the objections for not giving an opportunity to him to examine the MMTC officials and its Auditors. According to the petitioner, he made a request before the appellate authority on 24.6.2014 and also on 21.7.2014 seeking for cross examination of the concerned MMTC officials. But the assessing officer has rejected the said request. According to the petitioner, the alleged payment made by the MMTC have to be completely eschewed.

4. The learned counsel for the petitioner drew the attention of this Court to the order dated 30.6.2014 passed by this Court in Application No.2830 of 2013 in C.S.No.249 of 2013, wherein this Court has observed as follows:

> “Therefore, in view of the ratio decidendi laid down by the Hon`ble Supreme Court, point No.1 is answered in favour of the applications by holding that no specific allegations, much less, any allegations of fraud were made against the applications, and having regard to the fact that the third defendant was the officer of the respondent/

> plaintiff and he rudged the accounts of the respondent/plaintiff, and thereby, caused wrongful gains to the applicants and the respondent/ plaintiff was also able to deduct some amount an quantified the loss suffered by them and also having regard to Clause II of MOU, the dispute has to be referred to arbitration and it need not be tried by the Civil Court".

5. The learned counsel for the petitioner also drew the attention of this Court to the order dated 28.10.2014 passed by the Division Bench of this Court in O.S.A.No.244 of 2014 and the relevant paragraph is extracted below:-

> 21. On a perusal of the plaint, we find no infirmity in the findings of the learned single Judge. A plaint is not to be read like a statute. The plaint has to be read as a whole. The allegation is really against their employee and in accounting dispute inter se the parties, and by impleading the third defendant, the appellant cannot be permitted to defeat the arbitration clause. At request of learned Senior Counsel for the appellant, we do clarify that naturally what has been observed by the learned Single Judge is for purposes of deciding the application under Section 8 of the said Act and would not, in any case, affect the merits of controversy before the Arbitral Tribunal.

6. The learned counsel has also placed reliance on the judgment of this Court in THILAGARATHINAM MATCH WORKS V. COMMERCIAL OF CENTRAL EXCISE, TIRUNELVELI (reported in 2013 (29) E.LT. 195 (MAD), wherein this Court permitted the parties to cross examine the persons concerned. The relevant paragraph is extracted as follows:-

> "The fact that the annexure to the show cause notices contained the list of statements recorded from certain persons and officers and also the Energy Auditor's Report, in support of the show cause notices, is not denied. Once certain reports or statements are relied upon in an enquiry, it is fundamental that the author of the report and the persons from whom, such statements are allegedly recorded should be made available for cross - examination. It is part of the principle of the natural justice".

7. Per contra, the learned counsel appearing for the respondent submitted that the petitioner cannot presume that the appellate authority will reject the request at the threshold. It is stated by the learned counsel that the matter will be considered along with the appeal after giving an opportunity to the petitioner. The learned counsel for the respondent submitted that

this Court, by order dated 28.5.2014 in WP.Nos.14082 to 14088 of 2014, directed the authority to pass orders within a period of four weeks from the date of receipt of a copy of that order, when the petitioner approached this Court for a direction to the respondent to dispose of the appeal dated 09.4.2014 against the order of assessment passed by the Deputy Commissioner of Income Tax, Central Circle - III (1) for the assessment year 2006- 2007 to 2011 -2012. The learned counsel for the respondent further submitted that though more than four months have been lapsed, the petitioner, even though participated in the appeal, is not co-operating with the respondent for the disposal of the matter.

8. It is the submission of the learned counsel for the respondent that it is for the appellate authority to decide the matter on merits and in accordance with law and the petitioner has no locus standi to approach this Court by way of these writ petitions for a direction to cross examine the officials. It is also submitted that the officials of MMTC have produced only the documents available with them and no deposition has been made by the officials of the MMTC for the petitioner to cross examine them.

9. Heard both sides and perused the materials available on record.

10. Admittedly, the appellate authority is following the procedures prescribed under the Income Tax Rules. There is also no prohibition for cross examining the parties concerned, if required. But the petitioner cannot pessimistic that his application for request to cross examine will be rejected. He should be optimistic and it is for the appellate authority to consider the request of the petitioner with regard to the Cross examination of the officials before deciding the final issue.

11. Therefore, without going into the merits of the contentions raised in the affidavit filed in support of the writ petition Nos.1776 to 1782 of 2015, the writ petition Nos.1776 to 1782 of 2015 are dismissed with liberty to the the petitioner to agitate all the issue raised in these writ petitions before the Appellate Authority. It is for the Appellate Authority to consider the request of the petitioner, before passing final order and before deciding all the issues in the appeal as well as in the applications, and pass orders on merits and in accordance with law. The appellate authority is at liberty to permit the petitioner to cross examine the officials of the MMTC, if required. No costs. Consequently connected miscellaneous petitions are closed.

12. Insofar as Writ Petition Nos.1783 to 1791 of 2015 are concerned, the issue raised in these writ petitions cannot be decided at this stage by way of these writ petitions and, therefore, it is left open to the petitioner to agitate the same before the appellate authority in terms of the provisions of the Income Tax Rules. The appellate authority shall take up the matter and complete the same on day to day basis as the time granted by

this Court has already been expired. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To
The Commissioner of Income Tax (Appeals) - (C)-II
Office of the Income Tax Department,
108, M.G.Road, Nungambakkam,
Chennai - 600 034

+ 1 cc to M/s. T. Pramod Kumar Chopda, Advocate SR.4166

+ 3 ccs to MC Gan Law Firm, Advocate Sr.4041

W.P.Nos.1776 to 1791 of 2015
and M.P.Nos.1 to 1 of 2015

RSI(CO)
Eu 10.02.15