IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.06.2016

CORAM

THE HONOURABLE Mr. JUSTICE T.S.SIVAGNANAM

W.P.No.11650 of 2016
and
W.M.P.Nos.10056 & 10057 of 2016

Deepika Housing & Enterprises
Rep by its Partner Mr.Dinesh Kumar
37, (Old 19), Bajanai Koil Street
Choolaimedu, Chennai - 600 094. .. Petitioner

..Vs..

1.The Joint Commissioner of Income Tax
Non-corporate Range - 13
Room-310, New Block
121 MG Road, Chennai-34

2.Income Tax Officer
Non-corporate Ward - 13(3)
Chennai-600 034 .. Respondents

Prayer:
Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari and call for the records of the impugned order in F.No.144A Directions/JCIT20/2015-16 of the first respondent dated 19.03.2016 and quash the same.

For Petitioner : Mr.B.Ramana Kumar

For Respondents: Mr.M.Swaminathan

ORDER

Heard elaborately Mr.B.Ramana Kumar, learned counsel appearing for the petitioner and Mr.M.Swamination, learned Senior Standing Counsel appearing for the respondent and with the consent of the either side, the writ petition itself is taken up for final disposal.

2.The petitioner is a partnership firm engaged in the business of engineering works, builders and developers of residential properties. For the assessment year 2013-14, the petitioner firm filed its return of income on 26.09.2013, admitting a total income of Rs.12,62,277/-. This case was selected for scrutiny under Section 143(2) of the Income Tax Act and notice was issued on 05.06.2015.

3.During the course of hearing, the petitioner is said to have clarified to certain issues relating to opening work in progress brought forward from the previous assessment year 2012-13 to the assessment year 2013-14 as Rs.4,11,36,009/-. For the assessment year 2012-13, it was stated that the figure of Rs.1,75,56,500/- was shown as work in progress as on 31.03.2012 in the e-return which is filed by the petitioner. The petitioner is said to have clarified that the figure as shown in the opening work in progress for the assessment year 2013-14 is the correct value of the work in progress and the variation of Rs.2,35,79,509/- was due to the various compensating errors while uploading the e-return for the year 2012-13. This according to the petitioner is an inadvertent error and he sought to explain the same to the Assessing Officer.

4.It is the further case of the petitioner that for the assessment year 2012-13, the balance as per the accounts maintained by the Tally software may be adopted as against the e-return figures which are not in accordance with the Tally accounts. Further, where the accounts as per the tally accounts are taken the compensating errors would be rectified. There was also an alternate plea raised by the petitioner in terms of Section 145 of the Act.

5.The petitioner, thereafter filed an application before the Joint Commissioner on 11.01.2016 under Section 144A of the Act. Along with the said application, the petitioner enclosed a copy of the letter addressed by them to the Assessing Officer and requested for suitable directions to the Assessing Officer with regard to the assessment year 2013-14. In the letter given to the Assessing Officer, the petitioner furnished the details regarding the construction receipts, sale of UDS, details of break up of construction material and expenses project wise, business promotion with supporting vouchers, bank charges with interest, details of unsecured loans along with pan numbers etc., details of unsecured loans obtained from financiers along with pan numbers etc., details of sundry creditors along with pan numbers and details of advance received from the customers along with the name and pan numbers.

6.The first respondent granted an opportunity of personal hearing to the petitioner and they were represented by their authorized representative who had also filed the written submissions on 22.02.2016. The first respondent has considered the submissions and has passed an order on 19.03.2016. The petitioner has challenged the said order in this writ petition contending that though several issues were raised by the petitioner, the first respondent without considering and appreciating the submissions made by the petitioner had issued certain directions to the Assessing Officer which are infact counter productive and would be gravely prejudicial to the interest of the petitioner.

7.The learned counsel for the petitioner submitted that since the Joint Commissioner has not issued directions on the other issues requested by the petitioner, the Court may direct the other issued to be considered by the Joint Commissioner. Furthermore, it is submitted that since the Joint Commissioner being the superior officer and he having not issued directions to the Assessing Officer on the other issues, the Assessing Officer will fail to take into consideration the other issues raised by the petitioner.

8.Section 144A of the Act deals with the power of the Joint Commissioner to issue directions in certain cases. The Joint Commissioner on his own motion or on reference made to him by the Assessing Officer or on application by the assessee, call for and examine the record of any proceedings in which an assessment is pending and if he considers that, having regard to the nature of the case or the amount involved or for other reason, it is necessary or expedient so to do, he may issue such directions as he thinks fit for the guidance of the Assessing Officer to enable him to complete the assessment and such directions shall be binding on the Assessing Officer.

9.Therefore, it is submitted that the Assessing Officer will not consider the other issues which the petitioner has raised. After some argument, the learned counsel for the petitioner prays that they may be permitted to withdraw the application filed under Section 144A of the Act and are willing to go before the second respondent/Assessing Officer and place all points.

10.The learned counsel for the respondent submitted that the petition has been considered and orders have been passed.

11.In my view, no prejudice would be caused if the petitioner is permitted to approach the Assessing Officer and raise all the issues. In fact Section 144A is a provision which empowers the Joint Commissioner to give guidance to the Assessing Officer to enable him to complete the assessment. Thus, the ultimate object to be achieved is to complete the assessment. Therefore, if the petitioner is ready and willing to appear before the Assessing Officer and cooperate in the assessment proceedings, that would be in the interest of revenue and sufficient compliance of the statutory provisions.

12.Considering the peculiar facts and circumstances of the case, the petitioner is permitted to withdraw the application filed before the first respondent dated 11.01.2016 under Section 144A of the Act and consequently, the impugned order dated 19.03.2016 is set aside. The observations made therein is vacated and the petitioner is directed to appear before the second respondent and raise all the issues before the second respondent, who shall consider the same independently, uninfluenced by any observations contained in the order passed by the first respondent dated 19.03.2016.

13.The petitioner is directed to appear before the second respondent/Assessing Officer within a period of two weeks from the date of receipt of a copy of this order, to enable him to proceed further with the assessment.

14.The writ petition is disposed of accordingly. Consequently, the interim order stands vacated and the miscellaneous petitions are closed. No costs.

-s/d-
Assistant Registrar(CSII)

True Copy

Sub-Assistant Registrar

To
1.The Joint Commissioner of Income Tax
Non-corporate Range - 13
Room-310, New Block
121 MG Road, Chennai-34

2.Income Tax Officer
Non-corporate Ward - 13(3)
Chennai - 600 037.

+1 cc to Mr.B.Ramanakumar Advocate sr.31775/16
+1 cc to Mr.M.Swaminathan Advocate sr.32113/16

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