IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 13.04.2016

CORAM

THE HONOURABLE MR.JUSTICE M. DURAISWAMY

W.P. No.8020 of 2004

M/s.S.Thanislas Nadar & Sons,
rep. by its Managing Partner
T.Sebastian .. Petitioner

-vs-

The Commissioner of Income Tax-II
2,V.P.Rathinasamy Nadar Road,
Madurai - 625 002. ... Respondent

Prayer: Petition filed under Article 226 of the Constitution of India to issue a writ of certiorarified mandamus to call for the records of the respondent in C.No.407/11/2002-03 dated 13.02.2004 and quash the impugned order and consequently direct the respondent to grant relief to the petitioner for the assessment year 2000-01.

For Petitioner : Mr.R.Senniappan

For Respondent : Mr.M.Swaminathan,
Senior Counsel
Assisted by Mrs.V.Pushpa,
Senior Standing Counsel

O R D E R

The petitioner has filed the above writ petition to issue a writ of certiorarified mandamus to call for the records of the respondent in C.No.407/11/2002-03 dated 13.02.2004 and quash the impugned order and consequently direct the respondent to grant relief to the petitioner for the assessment year 2000-01.

2.It is the case of the petitioner that it is a Partnership Firm consisting of four partners, engaged in the business of manufacture and sale of tiles and deriving rental income. The petitioner firm is assessed to income tax on the file of the Assistant Commissioner of Income Tax, Circle I, Tirunelveli. The relevant assessment year is 2000-01 and the corresponding accounting year ended on 31.03.2000. On 01.08.2001, the petitioner filed a return of income admitting the income of Rs.25,18,256/-. A survey was conducted under Section 133A of the Income Tax Act on 27.12.2000 and during the course of the survey, the petitioner agreed to offer Rs.25,00,000/- as income.

Thereafter, the petitioner filed a petition under Section 264 of the Income Tax Act before the Commissioner of Income Tax-II, Madurai. The respondent, after considering the submissions made by the petitioner, rejected the petition filed under Section 264 of the Income Tax Act and held that once the income is offered, then the same cannot be withdrawn.

3.Mr.R.Senniappan, learned counsel appearing for the petitioner submitted that the petitioner did not voluntarily admit an income of Rs.25,00,000/- at the time of survey and that the statement was given only on the threat made by the respondent. The petition filed under Section 264 of the Income Tax Act was dismissed on the ground that the return of income was filed within the time allowed under Section 139(5) and hence the same is valid. Further the respondent held that once the assessee admitted the income, the same shall be the final and it cannot be changed. Further the return of income was filed voluntarily and income returned was accepted without making any addition.

4.On a perusal of the materials available on record, it could be seen that the return was filed under Section 139(4) of the Act within the time allowed and the return was filed, admitting an income of Rs.25,18,256/- including the additional income of Rs.25,00,000/- offered during the course of survey. The order under Section 264 of the Act was passed in accordance with the law laid down by the Hon'ble Supreme Court reported in 261 ITR 367 (SC) in the case of CIT vs. Shelly Products, wherein it has been held that the Act enjoins upon the assessee the duty to file a return of income disclosing his true income and the filing of the return and payment of tax thereon amounts to an admission of tax liability which the assessee admits to have incurred in accordance with the Act.

5.Learned counsel appearing for the respondent submitted that the respondent, taking into consideration the case of the petitioner, had rightly rejected the petition filed under Section 264 of the Income Tax Act. It is also pertinent to note that the petitioner has not filed any appeal as against the order. Further no objection was raised at the time of survey or after survey or at the time of processing the return file. When the return of income was filed voluntarily, no addition was made and the income returned was accepted, without making any addition, the petitioner cannot now take a stand that the statement was given only on the threat made by the respondent. As rightly pointed out by the respondent, the petitioner cannot plead ignorance and that the income that has to be assessed in the previous years and the income that has to be assessed in the hands of partners are to be excluded. Further the respondent had pointed out that in spite of the assessee has the option to file revised return till 31.03.2002 as per the provisions of Section 139(5) of the Income Tax Act, the assessee did not opt to do so. The finding of the respondent that the assessee's contention is a clear after thought is correct. Under this circumstance, I do not find any reason to interfere with the order passed by the respondent. The writ petition is devoid of merits and the same is dismissed. No costs. Consequently, connected M.P. is closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

vga

To

The Commissioner of Income Tax-II
2,V.P.Rathinasamy Nadar Road,
Madurai - 625 002.

+1cc to Mr.M. Swaminathan, Advocate, S.R.No.23742
+1cc to Mr.D. Vijayakumar, Advocate, S.R.No.23395

CA(CO)
EU(31/05/2016)

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