IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.6.2016

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

Writ Petition No.22126 of 2016

Ms.Protean Management Consultancy Pvt. Ltd., rep. by Director Mr.S. Sundaresan ...Petitioner

Vs

1.The Principal Commissioner of Income Tax, 121, Mahatma Gandhi Road, Nungambakkam, Chennai-34.

2.The Deputy Commissioner of Income Tax, Corporate Circle, 121, Mahatma Gandhi Road, Nungambakkam, Chennai-34. ...Respondents

PETITION under Article 226 of The Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus to call for the records on the file of the first respondent and quash the impugned order in C.No.1(1)/PCIT-5/264/2015-16 dated 21.3.2016 passed by the first respondent under Section 264 of the Income Tax Act and direct him to consider all material evidence on record including that of the remand report submitted by the second respondent and pass orders after giving adequate opportunity to the petitioner.

For Petitioner : Mr.N.V.Balaji
For Respondents: Mrs.Hema Muralikrishnan

ORDER

Mrs.Hema Muralikrishnan, learned Standing Counsel takes notice for the respondents. Heard both. By consent, the writ petition itself is taken up for final disposal.

2. The petitioner has come up with the above writ petition challenging the order passed by the first respondent under Section 264 of the Income Tax Act, 1961 (hereinafter referred to as the Act).

3. The petitioner was assessed to income tax by the second respondent under Section 143(3) of the Act for the assessment year 2011-12. While completing the assessment by order dated 31.3.2014, the second respondent rejected the claim for deduction of expenditure to the extent of Rs.63,88,614/- being part of the claim for deduction of expenditure towards salaries amounting to Rs.7,13,09,553/-. The only reason for rejection of the same was on the ground that the petitioner did not produce vouchers to the extent of Rs.63,88,614/- whereas they had produced vouchers for the remaining amount claimed as deduction.

4. During the personal hearing on 14.3.2014, the second respondent had opined that the petitioner had agreed for the disallowance of the claim for deduction.

5. However, on the subsequent date i.e 17.3.2014, the petitioner submitted a representation to the second respondent stating that during the hearing on 14.3.2014, the second respondent himself had raised a query pointing out the vouchers not produced and asked the petitioner to show cause as to why this expenditure should not be disallowed. In this regard, the petitioner stated that they shifted their office to Shakthi Towers, Anna Salai, that during transit, some of the files were displaced/lost and that they could not trace certain vouchers for the salaries, which were paid during the relevant period. The petitioner further stated that those payments were genuine and requested the second respondent to consider the facts and allow them as expenditure.

6. However, this request made by the petitioner was not acceded to by the second respondent and ultimately, the second respondent disallowed the deduction to the extent of Rs.63,88,614/- and raised a demand for Rs.24,97,320/-.

7. Aggrieved by the same, the petitioner filed a revision petition before the first respondent under Section 264 of the Act and prayed for a direction to set aside the order passed by the second respondent under Section 143(3) of the Act and to redo the assessment after verifying the details of the cheques, through which, payments have been made, bank statements and ledger copies, which came into possession of the petitioner after the assessment was completed. This review petition filed by the petitioner has been rejected by the first respondent.

8. On a perusal of the impugned order, it is seen that the first respondent called for a report from the Assessing Officer and there is a reference to such a report of the officer dated 4.8.2015 in paragraph 4 of the impugned order. However, the first respondent has not stated anything as to what was the report submitted by the Assessing Officer and as to how it is relevant or not relevant to the grounds raised by the petitioner

in the review petition. However, the first respondent proceeded solely on the basis as if the petitioner is estopped from raising such a contention.

9. In my view, the reason assigned by the first respondent for rejecting the review petition is not tenable for the simple reason that the petitioner had initially accepted for disallowance, which cannot be a ground to put against the petitioner, since, subsequently i.e. 17.3.2014, the petitioner made a request to the Assessing Officer to consider other documents and allow deduction claimed as expenditure.

10. In fact, when the first respondent called for the report from the Assessing Officer, the Assessing Officer gave a personal hearing to the petitioner, before whom, the petitioner produced all the vouchers and bank details, etc, to establish the genuineness of their claim. However, the petitioner had been kept in dark and has not been put on notice as to what was the nature of the report submitted by the second respondent dated 4.8.2015. Therefore, the first respondent has to independently consider the revision petition taking note of the details, which were placed by the petitioner before the Assessing Officer as well as the vouchers and decide the matter on merits and in accordance with law.

11. In the light of the above, the writ petition is allowed, the impugned order is quashed and the first respondent is directed to furnish a copy of the report of the second respondent dated 4.8.2015 to the petitioner so as enable the petitioner to put forth their objections and after affording an opportunity of personal hearing, the first respondent shall pass orders afresh on merits and in accordance with law. No costs.

-s/d-
Assistant Registrar(CSII)

True Copy

Sub-Assistant Registrar

To
1.The Principal Commissioner of Income Tax,
121, Mahatma Gandhi Road,
Nungambakkam, Chennai-34.

2.The Deputy Commissioner of Income Tax,
Corporate Circle,
121, Mahatma Gandhi Road,
Nungambakkam, Chennai-34.

+1 cc to Mr.T.Ravikumar Advocate sr.36245
+1 cc to Mr.M.V.Balaji Advocate sr.35899

WP.No.22126 of 2016

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aa14/07/2016