IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.12.2016

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THE HONOURABLE MR.JUSTICE RAJIV SHAKDHER

W.P.No.40042 of 2016
And
W.M.P.Nos.34091 and 34092 of 2016

M/s.Vishwasri Property India Pvt Ltd.,
Rep. by its Managing Director – S.Dhanapal ... Petitioner

Vs.

Assistant Commissioner (CT),
Sathy Road Circle,
Erode,
Erode District. ... Respondent

Prayer:

Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari calling for the records on the file of the respondent in its impugned proceedings made in TIN: 33132877137/ 2011-2012 dated 16.09.2016 quash the same.

For Petitioner : Ms.R.Hemalatha
For Respondent : Mr.K.Venkatesh
Government Advocate

O R D E R

1.By virtue of this writ petition, challenge is laid by the petitioner to the order dated 16.09.2016, passed by the respondent.

2.Notice in this writ petition was issued on 15.11.2016. Mr.Venkatesh, who appeared on advance notice on that date, sought time to obtain instructions. Mr.Venkatesh, once again seeks time to obtain instructions in the matter.

3.Having regard to the fact that the scope of the writ petition is very narrow, which is, as to whether the respondent could have passed the impugned order based on best judgment, once such an order had been passed on 29.09.2014, I am not inclined to grant further time in the matter.

4.Briefly, the challenge to the impugned order dated 16.09.2016 arises in the background of the following brief facts:

4.1.The petitioner avers that it is in the business of civil construction. It is stated that for the assessment year 2011-12, the petitioner had reported a total turnover of Rs.3,76,07,867/-. It is further averred that the taxable turnover was equal to the total turnover of the petitioner. Accordingly, once deemed assessment under Section 22(2) of the Tamil Nadu Value Added Tax Act, 2006 (in short, the Act) was completed, the petitioner, paid the tax amounting to Rs.3,87,764/. It is further averred that the petitioner paid towards interest a sum of Rs.49,025/-, albeit, under Section 42(3) of the Act.

5.According to the petitioner, the enforcement wing of the respondent carried out an inspection on 19.07.2013. It appears that during the course of inspection, certain defects were noticed. Evidently, an inspection report was generated which formed the basis of a notice dated 20th May, 2014. By virtue of the said notice, the petitioner was called upon to pay tax on deemed sale value to the extent of Rs.3,71,086/-. Furthermore, the petitioner was also held liable for non-deduction of tax at source to the extent of Rs.9,34,200. This apart tax liability was also claimed under Section 12 in respect of the transactions relating to purchase of steel fabrications from un-registered dealers, which according to the respondent, had been used in works contract. In addition, a sum of Rs.900/- was demanded from the petitioner.

6.The petitioner, evidently, filed its objection to the notice. The respondent, however, was not satisfied, and therefore, proceeded to pass the impugned order dated 16.09.2016. The counsel for the petitioner has raised two contentions before me.

7.First, that the respondent vide order dated 29.09.2014 had carried out a best judgment assessment, whereupon, after making adjustments for tax paid and ITC, an excess amount was found payable by the petitioner to the extent of Rs.49,025/-. It is therefore, the contention of the counsel for the petitioner that the second order, i.e., the order dated 16.09.2016, could not have been passed, once again, based on best judgment.

8.Second, that the petitioner could not have been mulcted with liability qua TDS as the sub-contractor had already paid tax in respect of the transaction for which TDS had to be deducted. In support of this contention, learned counsel for the petitioner relies upon Section 13(1)(c) of the Act. Emphasis is laid by the counsel for the petitioner on the proviso to sub-section (1)(c) of Section 13.

9.Counsel for respondent in support of his submissions, relies upon the orders passed in the proceedings, to which, I have already made reference to.

10.I have heard the learned counsel for the parties.

11.The Revenue, evidently, has issued a circular dated 20.04.2001, which amongst other guidelines issued to the Assessing Officer's, prohibits substitution of one best judgment assessment by another best judgment assessment. This aspect of the matter is indicated in clause 15 of the Circular. For the sake of convenience, the said clause is extracted hereafter:

> ***"....... 15.A best judgment assessment cannot be replaced by another best judgment assessment."***

12.Thus, clearly, the impugned order which is based on best judgment assessment could not have been passed in the instant case. Therefore, having regard to this aspect of the matter, in my view, the second contention raised by the petitioner need not be considered. However, since, the counsel for the petitioner has advanced submission on the second ground of challenge as well, I may briefly touch upon the same.

12.1. In this behalf, the contention of the learned counsel for the petitioner is that, since, the sub-contractor has paid the tax, the petitioner could not be made liable for purported failure to deduct tax at source. In my opinion, this submission, prima facie, appears to be untenable for the reason, that the liability to deduct tax at source under sub-section (1) of Section 13 arises, immediately, upon payment being made to any dealer for execution of the works contract. The obligation placed on the petitioner, in this behalf, is independent of the liability on the sub-contractor to pay tax.

12.2. As to whether the sub-contractor in turn, can seek credit qua the tax paid on his account is question which will, ordinarily, arise, when, his assessment takes place. Therefore, there is, to my mind, no weight in this plea advanced on behalf of the petitioner.

13.However, this aspect of the matter need not detain me any further, in view of the conclusion reached by me that revision of assessment carried out via the impugned order was not permissible in terms of clause 15 of circular dated 20.04.2001.

14.The writ petition is allowed and, the impugned order is, accordingly, quashed. Parties are left to bear their own costs. Consequently, the connected miscellaneous petitions are closed.

05.12.2016

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Index: Yes/ No   Internet: Yes/ No

To

The Assistant Commissioner (CT),
Sathy Road Circle,
Erode,
Erode District.

RAJIV SHAKDHER,J.

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