IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:02.12.2016

CORAM

THE HONOURABLE Mr.JUSTICE T.S.SIVAGNANAM

WP.Nos.40663 & 40664/2016
&
WMP.Nos.34664 to 34667/2016

M/s.Hotel Saravana Bhavan
rep.by its partner, No.19, Vadapalani
Andavar Koil Street, Vadapalani,
Chennai.26.

..Petitioner in both the Writ Petitions

Vs.

The Assistant Commissioner of
Income Tax, Central Circle-I [3]
Mahatma Gandhi Road, Chennai-34.

.. Respondent in both the Writ Petitions

Writ petitions filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus calling for the records of the impugned order of the respondent in No.PAN.AABFH3049M for the Assessment Years 2013-2014 and 2014-2015 respectively dated 30.09.2016 and quash the same and direct the respondent to provide a fresh opportunity of personal hearing.

For Petitioner : Mr.V.S.Jayakumar

For Respondent : Mr.T.Pramodkumar Chopda,
Addl.Govt.Pleader

COMMON ORDER

Heard Mr.V.S.Jayakumar, learned counsel appearing for the petitioner and Mr.T.Pramodkumar Chopda, learned Standing Counsel appearing on behalf of the respondent and with the consent on either side, the writ petition is taken up for final disposal.

2 Since the challenge to the impugned proceedings was on a very narrow campus, this Court requested the learned

Standing counsel for the revenue/respondent, to get instructions in the matter, so that the writ petitions can be disposed of.

3 The orders challenged in these writ petition are the orders passed by the respondent u/s.271AAB of the Income Tax Act, 1961. A search and seizure operation was conducted in the various business premises of the assessee on 23.07.2013 and as a part of the search operations, the residences of the partners and related persons were also covered in the search. The deficiencies which were found out at the time of the search were pointed out to the assessee and the statements were recorded from the partners of the assessee's Firm. Though the assessee did not file the original return of income for the year 2013-2014, in response to the notice u/s.153-A, they filed return of income for the Assessment Year 2013-2014 on 10.02.2015, admitting the total income at Rs.19,84,17,450/- which includes the undisclosed income of Rs.12.5 crores admitted during the course of search and the assessment was completed u/s.143[3] read with section 153A of the Act and an oder dated 30.03.2016 was passed. Thereafter, a Show Cause Notice was issued on 30.03.2016 u/s.274 read with section 271AAB of the Act, calling upon the petitioner to appear in person and to show cause as to why penalty should not be imposed under section 271 of the Act. In the said notice, the penalty proposed was at 10% of the undisclosed income of the specified Previous Year. In response to that, the petitioner submitted their objections and the impugned order has been passed levying penalty at 30%.

4 Similarly, for the Assessment Year 2014-2015, the facts are somewhat identical. But for the said year, the assessee had filed the return of income on 01.05.2015, admitting the total income of Rs.18,55,05,110/- which includes the undisclosed income of Rs.12.5 Crores admitted during the search. The Assessment was completed u/s.143[3] read with 153B [1][b] vide order dated 30.03.2016. Thereafter, a show cause notice was issued u/s.274 read with 271AAB of the Act dated 30.03.2016, proposing to levy penalty at 10% of the undisclosed income of the specified Previous Year. The petitioner submitted their objections and the respondent passed the impugned orders, levying 30% penalty.

5 The only ground on which the petitioner is before this Court is by contending that the impugned orders have been passed beyond what was proposed in the show cause notices. It is not in dispute that the show cause notice proposed the penalty only at 10%. When this issue was pointed out, the learned Standing Counsel for the revenue submitted that he has obtained instructions from the respondent by way of a letter dated 30.11.2016, wherein the respondent has admitted that in

the penalty notice, what was proposed was 10% on the undisclosed income and not 30% and this is pleaded to be an inadvertence. In the said letter, the respondent has agreed to give one more opportunity of being heard to the petitioner / assessee, before deciding the quantum of penalty on merits and in accordance with law.

6 In the light of the above stand taken by the respondent, there would not be any necessity to set aside the impugned orders. But, however, there will be a direction to the respondent to issue a rectified notice so that the petitioner will be able to respond to the same and the petitioner should be afforded reasonable opportunity in which personal hearing should be granted. The only difficulty expressed by the respondent as set out in paragraph [d] of the letter dated 30.11.2016 is on the question of limitation. Since this Court has issued certain directions, the petitioner / assessee shall not be entitled to raise the plea of limitation in the event, proceedings are initiated by the respondent in pursuant to the directions issued by this Court. The learned counsel for the petitioner also affirms before this Court that the petitioner will not raise any such plea of limitation consequent upon the remand order to be passed by this Court.

7 In the light of the above, the respondent is directed to issue a rectified notice to the petitioner and afford a reasonable opportunity to the petitioner including the opportunity of personal hearing, in which, the petitioner would be entitled to canvass not only the issue relating to penalty but certain other issues which in the opinion of the petitioner, has not been dealt with in the impugned order. After considering all the contentions raised by the petitioner, the respondent shall pass a speaking order on merits and in accordance with law.

8 The writ petitions stand disposed of with the above direction. No costs. Consequently, the connected miscellaneous petitions are closed.

AP

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

The Assistant Commissioner of
Income Tax, Central Circle-I [3]
Mahatma Gandhi Road, Chennai-34.

+ 1 cc to Mr.V.S.Jayakumar, Advocate Sr 71546

+1 cc to Mr.T.Pramodkumar Chopda, Advocate Sr 71483

KR/28/12

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