IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.07.2017

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THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.5806 of 2017 and
WMP.No.6221 of 2017

J.Naseema ...Petitioner

Vs

The Income Tax Officer,
Non Corporate Ward 3(1),
Coimbatore. ...Respondent

Prayer: Writ petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records of the respondent in respect of PAN ACCPN6058M, quash the assessment order dated 30.12.2016 and direct the respondent to pass fresh assessment order after furnishing the copies of the confirmation letters viz. Extract of the statements received from the 3 companies referred to in the show caUse notice dated 14.12.2016 to enable the petitioner to file the reconciled accounts and affording a personal hearing.

For Petitioner : Mr.R.Asokan
For Respondent : Mr.A.P.Srinivas
Standing Counsel

O R D E R

The petitioner has filed this writ petition, challenging the order of assessment under the provisions of the Income Tax for the assessment year 2014-15.

2. The learned counsel appearing for the petitioner, in the course of arguments, submitted that after filing the writ petition, the petitioner has filed an appeal before the Commissioner of Income Tax (Appeals), challenging the impugned order. However, the reason for approaching this Court is on the ground that despite the request made by the petitioner to provide the confirmation letters received from three companies, referred to in the show cause notice, the respondent Assessing Officer did not furnish the said confirmation letters to the

petitioner to enable her to reconcile the accounts. Further, it is submitted that when the books of accounts, bank statements, day books etc., are with the respondent, it is impossible for the petitioner to reconcile the accounts. Therefore, the petitioner would state that the respondent ought to have provided copies of the confirmation letters received from three companies and should have returned the books of accounts, bank statements, day book etc., to the petitioner to enable her to reconcile the accounts and thereafter, ought to have provided an opportunity of personal hearing.

3. In my considered view, this issue can very well be agitated before the Appellate Authority, as the Appellate Authority is the fact finding authority and is entitled to re-appreciate the facts, which were considered by the Assessing Officer, namely the respondent. The petitioner's apprehension is that the Appellate Authority having not been vested with any power to remand the matter to the Assessing Officer, it will be a futile attempt on her part to pursue the appellate remedy. The petitioner need not have any apprehension in this regard, as the Appellate Authority can exercise all powers as that of the original authority and if a request is made by the petitioner for furnishing copies of confirmation letters from three companies, the same would be considered by the Appellate Authority, after which the petitioner can file appropriate statement or representation to reconcile the accounts, which had been proposed in the show cause notice. Therefore, this Court is of the view that the following order will meet the ends of justice.

4. In the light of the above, the writ petition is disposed of :

i) by directing the petitioner to pursue the appellate remedy as against the impugned assessment order.

ii) The petitioner is granted liberty to file an application before the Appellate Authority seeking for copies of confirmation letters received from three companies referred to in the show cause notice.

iii) The Appellate Authority shall furnish the copies of the confirmation letters received from the three companies referred to in the Show Cause Notice, after which, the authorised representative of the petitioner will be entitled to peruse their books of accounts, bank statements, day book etc., and the same shall be called for by the Appellate Authority from the respondent and made available for perusal by the authorised representative in the office of the Appellate Authority.

iv) Upon receiving the copies of the confirmation letters received from the three companies and after perusing the books of accounts, bank statements etc., the petitioner is entitled to raise additional grounds before the Appellate Authority, if need arises.

v) The Appellate Authority, shall thereafter, hear the petitioner and dispose of the appeal on merits and in accordance with law.

No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

svki

To

The Income Tax Officer,
Non Corporate Ward 3(1),
Coimbatore.

+1cc to Mr.R.Asokan, Advocate Sr. 49607

+1cc to Mr.A.P.Srinivas, Advocate Sr. 49962

W.P.No.5806 of 2017

VGI(CO)
VR(03/08/2017)