IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.1.2017

CORAM

THE HONOURABLE MR.JUSTICE HULUVADI G.RAMESH
AND
THE HONOURABLE Dr.JUSTICE ANITA SUMANTH

W.A.Nos.1360 and 1539 of 2016
and
C.M.P.Nos.17464 and 19025 of 2016

M/s.S.T.N.&Sons,
rep. by its Managing Partner
T.Sebastian,
308, Main Road, Vallioor. Appellant in WA 1360/2016

M/s.Vincent Devaraj & Bros.,
rep. by its Partner
Mr.V.Edwin Bright,
No.308 J Main Road, Vallioor. Appellant in WA 1539/2016

Versus

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

Prayer: Writ Appeals filed filed under Clause 15 of the Letters Patent against the order dated 13.4.2016 passed in W.P.Nos.8020 of 2004 and 17437 of 2003 on the file of this court.

Prayer in WP.8020/04:
Writ 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.

Prayer in WP.17437/2003:
Writ 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.414/9/2002-03 dated 28.05.2003 and quash the impugned order and consequently direct the respondent to grant relief to the petitioner for the assessment year 2000-01.

For appellants : Mr.D.Vijayakumar

For Respondent : Mr.M.Swaminathan

COMMON JUDGMENT

(Judgment of the court was made by Dr.Anita Sumanth, J.,)

The present writ appeals challenge the orders of the learned Single Judge dated 13.4.2016 in W.P.Nos.8020 of 2004 and 17437 of 2003.

2. Pursuant to a survey conducted by the Department on 27.12.2000, Returns of income, and in one case, a revised return, were filed by both appellants. The Returns were processed and demands raised by the Department, challenging which, the appellants filed Petitions for Revision under Section 264 of the Income Tax Act (in short 'the Act') that were rejected. Challenging the same, writ petitions were filed before this court, which were dismissed upholding the orders passed in revision, assailed in appeal before us.

3. The statutory remedy for revising a Return of Income is provided in terms of Section 139(5) of the Act. This has not been availed of in the present case. Revision of the Return of Income under Section 264 has been sought on the ground that income of an amount of Rs.25,00,000/- offered voluntarily to tax at the time of survey under section 133A of the Act, is liable to be ignored in the computation of tax. Though the provisions of Section 264 are wide and can be invoked to revise any order passed by an authority subordinate to the Commissioner, it cannot extend to rectification of a return of income corroborated by a statement recorded voluntarily from the assessee offering income to tax.

4. In this view of the matter, the writ appeals fail and are dismissed. However, in view of the facts and circumstances of the case, we grant liberty to the appellant to approach the appropriate Departmental authorities seeking a suitable scheme of instalment for payment of the tax and interest which shall be considered in accordance with law. No costs. The connected miscellaneous petitions are closed.

Sd/-

Asst.Registrar (CS II )

/true copy/

Sub Asst. Registrar

ssk.

To:

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

+2cc to Mr.D.Vijayakumar,Advocate sr.2326

+1cc to Mr.M.Swminathan,Advocate sr.2376

W.A.Nos.1360 & 1539 of 2016

ak(co)
ss(5/5/2017)