IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.07.2017

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.38338 of 2003 &
W.P.M.P.No.46536 of 2003

M.Muthian ... Petitioner

Vs.

Commissioner of Income Tax,
121, Mahatma Gandhi Road,
Chennai-600 034. ... Respondent

Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, calling for the records of the respondent in Ref:C.No.CC.V/24(26) 2003-2004 dated 06.10.2003 issued by the respondent and quash the same as illegal and without jurisdiction and direct the respondent to issue suitable direction to dispose of the petition of the petitioner before him as per law.

For Petitioner : Mr.R.Sivaraman

For Respondent : Mrs.R.Hema Muralikrishnan

O R D E R

Heard Mr.R.Sivaraman, learned counsel appearing for the petitioner and Mrs.Hema Muralikrishnan, learned counsel appearing for the Revenue.

2.The petitioner has challenged the order passed by the Commissioner of Income Tax-V, dated 06.10.2003, by which the petitioner's application for waiver of interest under Section 234B/234C of the Income Tax Act, 1961, (Act) was rejected.

3. The petitioner had owned a property at Anna Nagar, which was acquired by him during July 1989, with a view to enter into property development busines. The petitioner promoted a company under the name and style 'Macro Marvel Projects Limited' and transferred the said house property in favour of the company on allotment of shares in lieu of the property. Thus, the petitioner did not receive any cash nor any sale that took place on the date of entering into the joint venture agreement with the company. The failure in real estate business and various

other factors leading to lack of funds prevented the petitioner from filing the return for the assessment year 1997-98, in respect of the deemed income accrued under the provisions of the Act. However, the petitioner filed return on 25.05.1999, without payment of self-assessment tax, as adviced by his auditor and had made the payment of tax on 06.11.2000. This has resulted in the charging of interest under Sections 234A, 234B and 234C of the Act.

4.Further, the petitioner contended that the nature of the transaction, which has resulted in the deemed capital gains is a peculiar one. The petitioner owned land and building in Anna Nagar. He started venture of real estate and he was doing the same for a long time. At one point of time he thought it fit to change his business into a limited company. So he promoted the company in the name of Macro Marvel Projects Limited for the sole purpose of expanding real estate business. Therefore, he transferred his above said land and building in favour of the company and the sale consideration was mere a book adjustment and a sole sale consideration of Rs.1,00,00,000/- (Rupees One Crore only) was by book adjustment allotted as shares to the petitioner in that company. Thereby, he became a major share holder, holding more than 50% of shares of the Company and he still remains as the major share holder. Therefore, the claim is that he is entitled to get exemption under Section 47(xiv) of the Income Tax Act.

5.After hearing the learned counsels on either side for considerable length of time, this Court pointed out that these factual issues, which cannot be taken up or decided in a writ petition filed under Article 226 of the Constitution of India. The learned counsel for the petitioner would state that the petitioer may be permitted to file a revision under Section 264 of the Act, before the Commissioner and may be permitted to raise all factual issues before the revisional authority.

6.The learned counsel appearing for the respondent does not have serious objection to the liberty being granted to the petitioner to file a revision under Section 264 of the Act before the Commissioner of Income Tax. Though the writ petition is pending from the year 2003, the points urged by the petitioner for not being able to pay the tax on time being factual has to be agitated before the appropriate fact finding authority and cannot be examined in a Writ Petition under Article 226 of the Constitution of India.

7.In the light of the above, the Writ Petition is disposed of granting liberty to the petitioner to file revision before the Commissioner of Income Tax under Section 264 of the Act and if such revision is filed, the revisional authority, while computing limitation shall exclude the period during which, this writ petition was pending before this Court (i.e.) from

22.12.2003, till the date of receipt of certified copy of this order and thereafter, proceed to decide the matter on merits after affording an opportunity of personal hearing to the petitioner or his authorized representative. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

abr/pbn

To

Commissioner of Income Tax,
121, Mahatma Gandhi Road,
Chennai-600 034.

+1cc to Mr.R.Sivaraman, Advocate SR.No.23443
+1cc to Mrs.Hema Muralikrishnan, Advocate SR.No.52576

W.P.No.38338 of 2003

EV)(CO)
GN(05/10/2017)