BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 12.07.2017

CORAM:

THE HONOURABLE MR.JUSTICE T.RAJA

W.P.(MD)No.12887 of 2017
and
W.M.P.(MD)No.9977 of 2017

M/s.Sri Lakshmi Hotels Private Limited,
Represented by its Managing Director,
V.S.Palanivel,
Having Office at
No.3A, Alexandria Road,
Cantonment,
Trichy-1. ... Petitioner

Vs.

1. The Tax Recovery Officer-1,
   O/o.Income Tax Recovery Office,
   Range-2,
   No.44, Williams Road,
   Cantonment,
   Trichy-1.

2. The Commissioner of Income Tax (Appeals),
   No.44. Williams Road,
   Cantonment,
   Trichy-1. ... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, seeking for issuance of a Writ of Certiorarified Mandamus, to call for the records pertaining to the demand notice in C.No.11/2017-18/AAACS8818B, dated 12.06.2017, on the file of the first respondent and quash as arbitrary and illegal and direct the respondents not to demand any amount from the petitioner on the basis of the said demand notice.

For Petitioner : Mr.V.Illanchezian
for Mr.G.T.Subramaniam

For Respondents : Mr.N.Dilipkumar

O R D E R

Mr.N.Dilipkumar, learned counsel takes notice for the respondents. By consent, the Writ Petition is taken up for final disposal.

2.The petitioner has come to this Court against the impugned Income Tax Certified Proceedings-1, dated 12.06.2017, issued by the first respondent on the basis of a Certificate, dated 18.05.2017, forwarded by the Assistant Commissioner of Income Tax, Circle-1, Tiruchirappalli, for recovery of a sum of Rs.2,10,37,021/- from the petitioner, on the ground that the impugned demand notice is contrary to law. Moreover, the impugned order is not supported with any proper documentary evidence.

3.But, the petitioner has not concealed any material information. It is not a case where the escaped turnover was found by the Assessing Officer in his Best judgment. But, it is a case of voluntary disclosure by the assessee in his return. The demand of the first respondent to the tune of Rs.2,10,37,021/- is wholly unsustainable, for the reason that the demand of the said amount is not final, because the appeal challenging the assessment is pending before the appellate authority, in Appeal No.ITA64/16-17 of 2016. At least, till the disposal of the appeal, it is pleaded, the impugned order should be kept in abeyance.

4.However, this Court is not inclined to entertain the present Writ Petition. The reason is, once the petitioner has firmly admitted before this Court that as against the original order directing them to pay the aforementioned amount, the appeal filed by them has been withdrawn, no purpose would be served by entertaining the present Writ Petition. Since the further appeal filed by the petitioner as against the order of penalty, is seized of by the second respondent, it is for the petitioner to work out their remedy by approaching the second respondent alone and not before this Court.

5.With the above observation, this Writ Petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(P&A)

/True copy/

Sub Assistant Registrar

To

1. The Tax Recovery Officer-1,
   O/o.Income Tax Recovery Office,
   Range-2,
   No.44, Williams Road,
   Cantonment,
   Trichy-1.

2. The Commissioner of Income Tax (Appeals),
   No.44. Williams Road,
   Cantonment,
   Trichy-1.

+1 cc to Mr.G.T.Subramaniam , Advocate in SR.No. 64868
+1 cc to Mr.N.Dilip kumar , Advocate in SR.No. 64902

smn2
AE/SKN RSK/SAR1/03.08.2017/3P/5C

W.P.(MD)No.12887 of 2017
12.07.2017