IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.01.2018

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THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.Nos.13211, 13212 & 14368 of 2011

P.Ajeeth ... Petitioner in W.P.No.13211/2011

P.Mahaveer ... Petitioner in W.P.No.13212/2011

P.Santhosh Bai Jain ... Petitioner in W.P.No.14368/2011

Vs.

The Commissioner of Income Tax-VIII,
3rd Floor, Main Building,
121, Nungambakkam High Road,
Nungambakkam, Chennai-600 034. ... Respondent in all the W.Ps.

Prayer in W.P.Nos.13211 & 13212 of 2011 : Petitions filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus, to call for the records of the impugned orders in C.No.22(7)/CIT VIII/264/2009-10 & C.No.22(8)/CIT VIII/264/2009-10 respectively, dated 25th March 2011 passed by the respondent and quash the same and directing the respondent to consider the plea for the exclusion of the capital gains tax on the sale of agricultural land and grant refund and also interest on the amount to be refunded.

Prayer in W.P.No.14368 of 2011 : Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus, to call for the records of the impugned order No. C.No.22(6)/CIT VIII/264/2009-10, dated 25.03.2011, passed by the respondent and quash the same and directing the respondent to consider the petitioner's plea for the grant of refund of tax by excluding the capital gains on agricultural land and interest on the refunded amount.

For Petitioner : Mr.V.S.Jayakumar
in all the petitions
For Respondent : Mr.J.Narayanaswamy,
in all the petitions Senior Standing Counsel

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COMMON ORDER

Heard Mr.V.S.Jayakumar, learned counsel for the petitioner and Mr.J.Narayanaswamy, learned Senior Standing Counsel for the respondents.

2.The petitioners in these three writ petitions are the mother and two sons and they have challenged an order passed by the Commissioner of Income Tax, Chennai dated 25.03.2011, rejecting the petitioners' petitions filed under Section 264 of the Income Tax Act, 1961.

3.The reason for rejection of the petitions as could be seen from para 4.3 of the impugned orders is that, in the absence of any revised return or new material facts, the order passed by the assessing officer does not call for interference.

4.In this regard, the respondent had placed reliance on the decision of the Hon'ble Supreme Court in the case of Goetze (India) Ltd. v. CIT reported in (2006) 284 ITR 323 (SC). This very issue was considered by this Court in the case of M/s.Bali Trading Pvt. Ltd. v. Principal Commissioner of Income-tax and another in W.P.No.10599 of 2017 dated 04.09.2017, and in the said case, the Court framed four questions for consideration of which, question Nos.1 to 3 would be relevant to the present cases and they are as follows:

> "(i) Whether the Principal Commissioner of Income Tax, the first respondent was right in rejecting the Revision Petition filed by the petitioner under Section 264 of the Act against the order passed by the Assessing Officer, the second respondent, who rejected the petitioner's request to rectify the assessment for the assessment year 2012-2013 ?
>
> (ii) whether the Assessing Officer was right in relying on M/s.Goetze India (supra), to reject the request for rectification?
>
> (iii) What are the powers of the Commissioner under Section 264 of the Act ?"

5.The Court after taking into consideration the decision in the case of Goetze (India) Ltd., and other decisions, answered the above questions on the following lines:-

> "11. Thus, the legal principle which emerges from the above decisions are:-
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> (i) The Assessing Officer cannot entertain a claim for deduction otherwise than by filing a revised return. This does not impinge upon the power of the ITAT under Section 254 of the Act.

(ii) The language of Section 264 provides ample power to the CIT to make or cause such inquiry to be made as he thinks fit in dealing with application for revision under Section 264 of the Act.

(iii) Limiting the power of the CIT only to the situation that was existing at the time of making assessment is to make the power of the CIT under Section 263 too restrictive.

(iv) Material which was not available to the ITO when he made the assessment could be taken into considerations by CIT after holding an enquiry, though such material has come on record subsequent to the making of the assessment.

(v) The power under Section 264 of the Act is a wide power, and one that is intended to prevent miscarriage of justice.

(vi) Powers under Section 264 of the Act is to enable the Commissioner to provide relief to an assessee, where the law permits the same.

(vii) The embargo placed on a assessing Officer in considering a new claim would not impinge on the power of the appellate authority or the revisional authority.

(viii) The phraseology adopted in Section 264 of the Act is of the widest amplitude, unless there is a direct impediment to the said power.

(ix)The Supreme Court in M/s.Goetze India (supra), had no occasion to deal with the power of the Commissioner under Section 264 of the Act.

....

16. Thus, on facts, the first respondent found that a company, which is claiming no business activity with no other income other than rental income and interest income claiming expenditure on repairs to plant and machinery that too in an increasing in manner, clearly indicates a position otherwise. Further, on facts, the first respondent found that the assessee has not been able to prove with evidence that there has been no business activity during the impugned assessment year. Thus, the first respondent having done a factual exercise, in exercise of his power under Section 264 and on facts, found that the theory as propounded by the petitioner as a keying error to be not proved conclusively. In such fact situation, the order passed by the first respondent calls for no interference."

6.The above referred order would apply with full force to the cases on hand. Thus, following the same, these writ petitions are allowed, the impugned orders are set aside and the matters are remanded to the respondent for fresh consideration in accordance with law. No costs.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

To

1.The Commissioner of Income Tax-VIII,
3rd Floor, Main Building,
121, Nungambakkam High Road,
Nungambakkam, Chennai-600 034.

2.The Joint Commissioner of Income Tax
Vellore Range, Vellore

3.The Assistant Commissioner of Income Tax,
Vellore Range, Vellore

+3 ccs to Mr.V.S.Jayakumar Advocate sr 907
+3 ccs to Mr.J.Narayanaswamy Advocate sr 1712,1713 & 1716

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