In the High Court of Judicature at Madras

Dated : 11.4.2018

Coram :

The Honourable Mr.Justice T.S.SIVAGNANAM

Writ Petition No.8579 of 2018 & WMP.No.10515 of 2018

M/s.Orient Green Power Company Ltd., Chennai-8 rep.by its Deputy General Manager ...Petitioner

Vs

The Deputy Commissioner of Income Tax, Corporate Circle 5(1), Aayakar Bhavan, NO.121, Nungambakkam High Road, Chennai-34. ...Respondent

PETITION under Article 226 of The Constitution of India praying for the issuance of a Writ of Certiorari to call for the records of the respondent in his proceedings leading to passing of the assessment order dated 29.1.2018 and quash the portion of the order relating to disallowance under Section 14A in the said assessment order.

For Petitioner : Mr.S.Sathiyanarayanan

For Respondent : Mrs.Hema Muralikrishnan, SSC

ORDER

Mrs.Hema Muralikrishnan, learned Senior Standing Counsel accepts notice for the respondent. Heard both.

2. The petitioner has filed this writ petition challenging the impugned assessment order passed by the respondent under Section 143(3) read with Section 92CA read with Section 144C(1) of the Income Tax Act, 1961.

3. As against the impugned assessment order, the petitioner has an effective alternate remedy of appeal before the Commissioner of Income Tax (Appeals). Thus, the first hurdle that the petitioner has to cross is to convince this Court that despite existence of alternate remedy, the petitioner is justified in approaching this Court under Article 226 of The Constitution of India.

4. The learned counsel for the petitioner submits that the draft assessment order was issued by the respondent on 26.12.2017. The petitioner filed their objections dated 11.1.2018. It is pointed out that in the said objections, the petitioner placed reliance on the decision of the Hon'ble Division Bench of this Court in the case of Redington (India) Limited Vs. ACIT [reported in 2017 (77) Taxmann.Com 257] and stated that principle of judicial discipline deems that as an Authority exercising quasi judicial function, the Assessing Officer has to follow the decision in Redington (India) Limited. It is also pointed out that the facts in the said decision are similar to that of the petitioner's case that no disallowance under Section 14A of the said Act can be made.

5. In the said objections, the petitioner also pointed out that there is a miscalculation in the 14A workings in the draft assessment order, that at the time of filing income tax returns themselves, they had calculated a detailed working for disallowance under Section 14A of the said Act as Rs.8 lakhs and that this has not been considered in the draft assessment order. In the said objections, the petitioner also disputed the finding recorded by the respondent in the draft assessment order as if their representative agreed to the addition as stated in the draft assessment order. However, the respondent, by the impugned order, completed the assessment.

6. It is pointed out by the learned counsel for the petitioner that so far as the disallowance under Section 14A of the said Act is concerned, the respondent has not considered the petitioner's objections and that the findings recorded by the respondent are based on surmises and conjectures and not based on any materials. The learned counsel further submits that with regard to other aspects, which have been dealt with in the impugned assessment order, the petitioner proposes to file an appeal before the Commissioner of Income Tax (Appeals). However, so far as the issue relating to disallowance under Section 14A of the said Act and other subsidiary issues are concerned, the impugned assessment order has to be set aside and that the matter may be remanded to the respondent for a fresh consideration.

7. The learned counsel for the petitioner further submits that the decision in the case of Redington (India) Limited has been quoted with approval by another Hon'ble Division Bench of this Court in the case of CIT Vs. Chettinad Logistics (P) Ltd. [reported in (2017) 248 Taxmann.com 55]. Further, by placing reliance on the decision of the Hon'ble Division Bench of the Delhi High Court in the case of Principal Commissioner of Income Tax Vs. U.K.Paints India (P) Ltd. [reported in (2017) 392 ITR 552], it is submitted that the question of applying the

statutorily prescribed method would arise only if the Assessing Officer expresses his opinion rejecting the assessee's methodology and the figure offered at the time of assessment and that this is material because the jurisdiction to go into the method prescribed in the Rules arises only if the amounts the assessee offers do not have any realistic correlation with the tax exempt income. Therefore, if this procedure is not followed, Section 14A of the said Act would be reduced to a mere formality.

8. On the above grounds, the learned counsel for the petitioner submits that a portion of the order passed by the respondent may be set aside and that the matter be remanded to the respondent for a fresh consideration.

9. The learned Senior Standing Counsel appearing for the Revenue, on the other hand, submits that the Rules have been amended and that the decision of the Hon'ble Division Bench in the case of Redington (India) Limited has to be held to be no longer good law. Apart from that, all the issues raised by the petitioner are factual and therefore, the petitioner should be relegated to avail the alternate remedy. According to her, the petitioner cannot have a piecemeal challenge of the impugned order by filing a writ petition against some of the issues and by filing an appeal before the Commissioner of Income Tax (Appeals) against the other issues. She further submits that the writ petition has to be held to be not maintainable.

10. This Court has carefully considered the contentions on either side.

11. Admittedly, as against the impugned assessment order, the petitioner has an effective alternate remedy of appeal before the Commissioner of Income Tax (Appeals). On the grounds raised by the petitioner, should they be permitted to by-pass the remedy. In the recent decision in the case of Authorized Officer, State Bank of Travancore Vs. Mathew K.C. [Civil Appeal No.1281 of 2018 dated 30.1.2018], the Hon'ble Supreme Court considered the issue as to under what circumstances, the discretionary jurisdiction under Article 226 of The Constitution of India could be exercised when there are alternate statutory remedies. It was pointed out that the discretionary jurisdiction under Article 226 of The Constitution of India is not absolute, but has to be exercised judiciously in the given facts of the case and in accordance with law and the normal rule is that a writ petition under Article 226 of The Constitution of India ought not to be entertained if alternate statutory remedies are available except in cases falling within the well defined exceptions. Some of the exceptions, which were pointed out, are

(i) violation of the principles of natural justice

(ii) the statutory authority has not acted in accordance with the provisions of the enactment and

(iii) in defiance of the fundamental principles of judicial procedure.

12. By applying the above principles, if this Court looks into the facts of the present case, there appears to be no allegation of the violation of principles of natural justice, as the petitioner has been given an opportunity to file their objections to the draft assessment order. What is now agitated before this Court is with regard to the manner, in which, the objections were considered and it is alleged that the finding rendered by the respondent in the impugned assessment order is purely based on surmises and conjectures. However, this challenge is only in respect of two issues, which have been mentioned in the impugned assessment order, as, in respect of other issues, the petitioner itself is in the process of filing an appeal before the Commissioner of Income Tax (Appeals).

13. Thus, in my considered view, a piecemeal challenge to the impugned order should not be encouraged, more particularly when factual issues are involved and it is but proper for the petitioner to avail the statutory appeal remedy and not to by-pass the same. This Court finds that this is not a fit case where the discretionary jurisdiction under Article 226 of The Constitution of India should be exercised. In the result, the writ petition is held to be not maintainable and the petitioner is granted liberty to avail the alternate remedy of appeal before the Appellate Authority, if so advised.

14. Accordingly, the writ petition is dismissed. No costs. Consequently, the connected WMP is also dismissed.

15. It is made clear that it is open to the petitioner to raise all contentions in the appeal and any observations made in this order, shall, in no manner, prejudice the rights of the petitioner in the appeal.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

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To

The Deputy Commissioner of Income Tax, Corporate Circle 5(1),
Aayakar Bhavan, No.121, Nungambakkam High Road, Chennai-34.

+1cc to Mr.S.Sathiyanarayanan, Advocate, S.R.No.26688

WP.No.8579 of 2018 &
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SSI(CO)

RRK(14/05/2018)