IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.12.2018

Coram

The Hon'ble Mr. Justice M.M.SUNDRESH
and
The Hon'ble Mr. Justice KRISHNAN RAMASAMY

W.P.No.25154 of 2018

M/s.Hyundai Motor India Limited
rep. by its Authorised Signatory
T.Saravanan ..Petitioner

Vs

The Income Tax Appellate Tribunal,
Chennai, A3, II Floor, Rajaji Bhavan,
Besant Nagar, Chennai - 90. ..Respondent

Petition filed under Article 226 of The Constitution of India praying for the issuance of a writ of certiorarified mandamus to call for the records relating to the order of the respondent in M.P.No.208/Mds/2017 dated 10.01.2018 for the assessment year 2011-12 in the case of the petitioner and quash the same in respect of the issues which were dismissed as not pleaded and consequently direct the respondent to adjudicate the grounds of Appeal Nos.35 and 37.

For Petitioner .. Mr.Subbaraya Aiyar
For Respondent .. Ms.Hema Muralikrishnan

ORDER
(Order of the Court was made by M.M.SUNDRESH, J.)

Seeking to quash the order of the respondent in M.P.No.208/Mds/2017 dated 10.01.2018 for the assessment year 2011-12 in the case of the petitioner in respect of the issues which were dismissed as not pleaded and consequently direct the respondent to adjudicate the grounds of Appeal Nos.35 and 37, the present writ petition has been filed.

2.The petitioner filed an application seeking to adjudicate the three issues, which were not decided on the earlier occasion, while the case was disposed of. Of these three issues, one was taken up as against the two. The Tribunal observed that the authorised representative of the petitioner did not press the other two issues.

3.Learned counsel for the petitioner submits that it was factually not correct. Recording made by the Tribunal was that the authorised representative of the petitioner has not pressed the other two issues. Neither the authorised representative of the petitioner made a statement orally nor any endorsement has been made. Since there is no provision seeking a direction to adjudicate on the two issues which are sought to be adjudicated through miscellaneous petition by way of filing another one, this Court has been approached.

4.Learned counsel appearing for the respondent submitted that the only remedy open to the petitioner is to file an appeal.

5.Since it is a factual recording by the Tribunal, this Court is not inclined to interfere with the same. The petitioner, on affidavit, has stated that two issues, though raised, but not adjudicated upon. Learned counsel appearing for the petitioner also submits that the authorised representative of the petitioner has not made such a contention before the Tribunal nor made any endorsement to this effect.

6.Though this Court is not able to accept the contention of the petitioner that there is no provision to ask the Tribunal to adjudicate upon the aforesaid issues, this Court is not wiling to direct the petitioner once again to approach the Tribunal for the aforesaid purpose. When the recording is made wrongly, the remedy open to the party is to approach the forum, which has done the same. However, in order to avoid further delay and in the light of the assertion made by the learned counsel appearing for the petitioner, we deem it appropriate to set aside the order passed in M.P.No.208/Mds/2017 dated 10.01.2018 insofar as the two issues, which have not been adjudicated upon alone. We direct the Tribunal to undertake the abovesaid exercise and conclude the same within a period of eight weeks from the date of receipt of a copy of this order. It is left open to the parties to raise all the issues to be adjudicated before the Tribunal.

7.The writ petition is allowed on the above terms. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

mmi

To

The Income Tax Appellate Tribunal,
Chennai, A3, II Floor, Rajaji Bhavan,
Besant Nagar, Chennai - 90.

+1cc to Mr.Hema Muralikrishnan, Advocate, S.R.No.82808

W.P.No.25154 of 2018

VSNII(CO)
GSP(03/01/2019)