BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : **04.10.2018**

CORAM:

THE HONOURABLE MRS. JUSTICE J.NISHA BANU

W.P.(MD)No.7346 of 2013
and
M.P.(MD)Nos.1 & 2 of 2013

Manimaran .. Petitioner

Vs.

1.The Deputy Commissioner of Income Tax,
Circle II, C.R.Buildings, V.P.Rathnaswamy Road,
Madurai - 625 002.

2.The Commissioner of Income Tax,
Circle II, C.R.Buildings, V.P.Rathnaswamy Road,
Madurai - 625 002.

3.M/s.Peri Thiyagarajan & Co.,
Chartered Accountant Firm,
37, H.A.K.Road,
Chinnachokkigulam,
Madurai - 625 002. .. Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of CERTIORARIFIED MANDAMUS, to call for the records of the petitioner on the file of the first respondent in AHEPM1251G/Circle - II/2012-13 and quash the impugned order dated 21.03.2013 appointing Special Auditor u/s 142(2A) of the Income Tax Act, 1961 pending set-aside assessment proceedings relating to the Assessment Year 2005-06 and consequently direct the first respondent to complete the assessment u/s 143(3) r.w.s 254 of the Income Tax Act, 1961 for the Assessment Year 2005-06 based on the directions of the Income Tax Appellate Tribunal in ITA No.1531/Mds/2011 dated 14.03.2012.

For Petitioner: Mr.Ramanakumar
For R1 & R2 : Mrs.S.Srimathy,
Special Government Pleader
For R3 : No representation

ORDER

This writ petition is directed against the impugned order of the first respondent in AHEPM1251G/Circle - II/2012-13, dated 21.03.2013, in and by which, the first respondent appointed the third respondent as 'Special Auditor' under Section 142(2A) of the Income Tax Act, 1961 (in short 'Act').

2. The petitioner herein is an assessee on the file of the first respondent. For the assessment year 2005-06, the petitioner filed his returns on 22.03.2006, for which assessment order under Section 143(3) of the Act was passed on 28.11.2007. Thereafter, the first respondent proposed to reopen the assessment, for which, notice under Section 148 of the Act was issued and finally, revised assessment order was passed. Aggrieved over the same, the petitioner has filed an appeal before the Commissioner of Income Tax (Appeal), which was allowed. The said appellate order was challenged by the Department before the Income Tax Appellate Tribunal (ITAT) and the Tribunal remanded the matter, only for the purpose of adjudicating the issue regarding the deposit of Rs.56,34,828/-.

3. Learned Counsel for the petitioner would submit that the Assessing Officer was directed to verify the issue of deposit of Rs.56,34,828/- with relevant materials and thereafter, to adjudicate the issue afresh as per law. He would further submit that there is no complex issue involved in this matter. But, the Assessing Officer, only to drag on the proceedings, has passed the impugned order, appointing Special Auditor. Hence, he prays for allowing the present writ petition.

4. For better understanding, the operative portion of the order passed by the Tribunal is extracted thus:

> *"...We, therefore, modify the order of the ld.CIT(A) and set aside the issue of deposit of Rs.56,34,828/- to the file of the Assessing Officer for verification with relevant materials and thereafter to adjudicate the issue afresh as per law..."*

No where, the Assessing Officer was directed to entrust the work with Special Auditor. Moreover, in the impugned order also, there is no whisper as to the complexity involved in the adjudication of the present case.

5. At this juncture, learned Special Government Pleader appearing for the official respondents fairly submitted that the impugned order may be quashed and the matter may be remanded for fresh consideration.

6. In view of the foregoing discussions and also taking note of the submission made by the learned Special Government Pleader, the order impugned dated 21.03.2013 is set aside and the matter is remitted back to the file of the first respondent for fresh consideration. The first respondent is directed to afford an opportunity of personal hearing to the petitioner and thereafter, pass appropriate orders, as per the order of the Tribunal dated 14.03.2012, on merits and in accordance with law. The entire

exercise shall be completed within a period of four weeks from the date of receipt of a copy of this order.

7. With the above observations and directions, this writ petition stands allowed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (RTI)

// True Copy //

Sub Assistant Registrar(CS-IV)

To

1.The Deputy Commissioner of Income Tax,
Circle II, C.R.Buildings, V.P.Rathnaswamy Road,
Madurai - 625 002.

2.The Commissioner of Income Tax,
Circle II, C.R.Buildings, V.P.Rathnaswamy Road,
Madurai - 625 002.

+ 1 CC TO MRS.S.SRIMATHY, ADVOCATE IN SR NO.88782

GK
BU/NM/RP/SAR-IV :13.11.2018 : 3P/4C

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