IN THE HIGH COURT OF JUDICATURE OF MADRAS

DATED: 26.07.2019

CORAM:

THE HONOURABLE MR. JUSTICE M.S. RAMESH

W.P.No.26276 of 2007

Kamala Muthiah,
as the erstwhile Director of
M/s.M.Ct.M.Corporation Pvt. Ltd.,
(Now Dissolved)
761, Anna Salai,
Chennai - 600002. ...Petitioner

Vs

The Asst. Commissioner of Income Tax,
Company Circle IV(1),
121, Nungambakkam High Road,
Chennai - 600034. ...Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a writ of Certiorari, calling for the records in P.A.N.MA 8 dated 28.03.2007 read with MC-8/2000-01 dated 18.07.2007 of the respondent and quash the same.

For Petitioner : Mr.N.Muthukumar

For Respondent : Mr.D.Prabhu Mukunth Arun Kumar, Junior Standing Counsel

O R D E R

The rejection of the petitioner's objections to the Notice issued under Section 148 of the Income Tax Act, is under challenge in the present writ petition.

2. The learned counsel for the petitioner had, predominantly raised a ground stating that the Company was dissolved with effect from 01.04.1999 and apparently the Notice under Section 148 pertaining to the assessment year 2000-01, issued to M/s.M.Ct.M.Corporation Pvt. Ltd., cannot be maintained, since the Company is deemed to be non-est. On this short ground, the learned counsel would submit that the challenge to the Notice, by invoking Article 226 of the Constitution of India, is maintainable.

3. In support of his contention, the learned counsel had also relied upon the orders of this Court dated 10.12.1999, passed in C.P.Nos.105 to 107 of 1999, sanctioning the Scheme of Arrangement for demerger of M.Ct.M. Corporation Pvt. Ltd. into M.Ct.M. Global Investments Pvt. Ltd and Sivagami Holdings Pvt. Ltd. with effect from 01.04.1999.

4. It is the case of the petitioner that pursuant to this order, they had informed the Department through a letter dated 29.11.2000 stating that, they had not filed any income tax returns for the assessment year 2000-01 in view of the demerger with effect from 01.04.1999. The assessment order was passed on 29.03.2005 and subsequently, the High Court had also confirmed the dissolution on 27.06.2006. In view of these developments, the Notice under Section 148, for reopening the assessment of M/s.M.Ct.M.Corporation Pvt. Ltd., for the assessment year 2000-01, cannot be sustained.

5. The learned Standing Counsel appearing for the respondent, would rely upon Section 292-B of the Income Tax Act and submit that even assuming the Notice to be a mistake, the Notice cannot be set aside on that ground. In support of his contention, the learned counsel relied upon the decision of the Delhi High Court reported in [2018] 90 taxmann.com 413 (Delhi) in the case of Sky Light Hospitality LLP vs. Assistant Commissioner of Income Tax, Circle 28(1), New Delhi, which came to be later confirmed in [2018] 92 taxmann.com 93 by the Hon'ble Supreme Court of India.

6. The issue as to whether the assessment came to be reopened for the year 2000-01 seems to be on a disputed set of facts, since the Department in their letter dated 16.05.2007, while replying to the petitioner's letter dated 05.04.2007, had found it necessary to reopen, based on the notes of accounts on the Balance Sheet as on 31.03.2000. This aspect is disputed by the petitioner, since M/s.M.Ct.M.Corporation Pvt. Ltd., was dissolved with effect from 01.04.1999 itself and they had intimated the respondent of not filing the income tax returns for the assessment year 2000-01, in view of the dissolution. When such a reply has been given by the Department, it is quite possible that there could be an error with regard to the reference of the balance sheet of the Company.

7. Even otherwise, when the Department has come out with a statement that the notes of accounts on the Balance Sheet as on 31.03.2000 has entitled them to send the Notice under Section 148, it will not be appropriate for this Court to investigate into these disputed facts. Nevertheless, it is also claimed that the petitioner, by a subsequent communication dated 31.05.2007, had objected to the reasons for reopening the assessment. While

considering such objections, the respondent had rejected the same through a letter dated 18.07.2007. Since this Court is of the view that the petitioner may have certain valid grounds to raise in connection with the demerger of the petitioner's Company with effect from 01.04.1999, it would be appropriate for the respondent to re-consider the objections.

8. In view of these disputed facts, I do not intend to go into the reasonings adduced by both the parties, but would rather feel it appropriate that the Assessing Officer re-considers such objections by extending due opportunity to the petitioner.

9. In the light of the above observations, the petitioner is granted liberty to raise further objections before the Assessing Officer to the Notice dated 28.03.2007, issued under Section 148 of the Income Tax Act, within a period of 15 days from the date of receipt of copy of this order. On receipt of such objections, the Assessing Officer shall deal with it, in accordance with law, after giving a due opportunity of personal hearing to the petitioner and take a final decision, atleast within a period of 12 weeks therefrom.

10. With the above observations, the writ petition stands closed. No costs.

hvk

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

The Asst. Commissioner of Income Tax,
Company Circle IV(1),
121, Nungambakkam High Road,
Chennai - 600034.

+1cc to M/s.Mallika Srinivasan, Advocate, SR.No.64378
+1cc to M/s.Hema Muralikrishnan, Advocate, SR.No.64373

W.P.No.26276 of 2007

Kak(17/09/2019)