IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.10.2019

CORAM

THE HONOURABLE MR. JUSTICE K.RAVICHANDRABAABU

W.P.No.7002 of 2019
and
W.M.P.No.7726 of 2019

M/s. Muthiah Meena,
Plot 20.A.No.15,
South Lieth Castle Road,
Santhome, Chennai - 600004.
PAN - AFLPM 5980R ... Petitioner

Vs.

1. Principal Commissioner of Income Tax, Chennai - 1
   Room 701, 7th Floor, New Bloom, Aayakar Bhavan,
   121, M.G.Road, Chennai - 600034.

2. Tax Recovery Officer - 1, Chennai
   Room No.327 A, 3rd Floor, New Block, Aayakar Bhavan,
   121 M.G.Road, Chennai - 600034.

3. Income Tax Officer,
   Non-Corporate Ward 1(3), Chennai
   Room No.307, 3rd Floor, New Block, Aayakar Bhavan,
   121 M.G.Road, Chennai - 600034. ... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus to quash the show cause notice of the first respondent dated 19.11.2018, also order to waive the payment of 20% of the disputed tax demand as required in an Appeal made before the CIT(A).

For Petitioner :Mr.B.Ramana Kumar

For Respondents :Mrs.Hema Muralikrishnan
Senior Standing Counsel

O R D E R

This writ petition is filed challenging the show cause notice issued under Section 276C(2) of the Income Tax Act, 1961 dated 19.11.2018, wherein and whereby, the petitioner was called upon to show cause as to why sanction under Section 279 (1) of the Income Tax Act, 1961, should not be accorded directing the Assessing Officer to file the requisite complaints for the relevant Assessment Year before the Chief Judicial Magistrate (Economic Offences), Egmore, Chennai for the offences committed by the petitioner under Section 276C(1) and under Section 277 of the Income Tax Act, 1961.

2. Heard the learned counsel appearing for the petitioner and the learned senior standing counsel appearing for the respondents.

3. The grievance of the petitioner against the impugned show cause notice is that when a statutory appeal is filed and pending before the Commissioner of Income Tax (Appeals) as against the order of assessment, the impugned action is totally unwarranted. In other words, it is the contention of the petitioner that even before the liability of the petitioner is decided by the Appellate Authority, the impugned action even by way of issuing show cause notice cannot be maintained.

4. On the other hand, the learned senior standing counsel for the respondents/Revenue contended that the petitioner has already suffered with an order of assessment and though an appeal is filed, she has not chosen to file any stay petition either before the Appellate Authority or before the Assessing Authority. Therefore, she submitted that the impugned show cause notice was rightly issued. Apart from saying so, the learned senior standing counsel further submitted that in any event, it is only the show cause notice and therefore, the petitioner can file the reply/objection, which they have already done by way of their communication dated 14.02.2019 and consequently, the first respondent will consider the said reply and pass appropriate orders.

5. It is seen that in respect of the relevant Assessment Year 2012-13, the assessment order dated 31.03.2015 was passed by the third respondent, wherein and whereby, the Assessing Officer made a computation of Income and raised the demand of Rs.1,49,15,920/- also by indicating that proceedings for penalty will be initiated separately. It is further seen that as against the said order of assessment, the petitioner preferred an appeal before the Commissioner of Income Tax (Appeals) on 10.06.2015 and admittedly, the said appeal is still pending. However, it is stated by the Revenue that the petitioner has not chosen to file any stay petition before the Appellate Authority nor before the Assessing Officer. Under such circumstances, the present impugned show cause notice was issued to the petitioner on 19.11.2018. Admittedly, the petitioner has filed their objection, raising all the contentions. Therefore, it is for the first respondent to consider the said objection dated 14.02.2019 and pass appropriate orders on merits and in accordance with law. It is also open to the petitioner to file appropriate stay petition before the Appellate Authority, more particularly, when the appeal was filed as early as on 10.06.2015 and the

same is kept pending all along. When all these courses of action are available to the petitioner, I do not think that the present writ petition can be still entertained, as it is for the first respondent to pass orders on the objection raised by the petitioner dated 14.02.2019.

6. Accordingly, this writ petition is disposed of, by directing the first respondent to pass orders on the objections raised by the petitioner dated 14.02.2019 on merits and in accordance with law, within a period of four weeks from the date of receipt of a copy of this order. No costs. Connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

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To

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+1cc to Mr.B.Ramanakumar, Advocate Sr.88039
+1cc to Mrs.Hemamuralikrishnan, Advocate Sr.87253

W.P.No.7002 of 2019

pm[co]
srg 19/11/2019