IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.10.2019

CORAM

THE HONOURABLE DR. JUSTICE ANITA SUMANTH

Writ Petition No.9236 of 2013
& M.P. Nos. 1 of 2013 & 1 of 2014

1.K.S.Mohan (Deceased)
2.Sudha
3.M.Seshadri
4.Priya
(P2 to P4 are substituted as LRS of Deceased sole petitioner as per order dated 31.10.2019 in WMP No.30908 of 2019)

...Petitioners/Petitioners

Vs

1. Commissioner of Income Tax,
Chennai - VIII,
VI Floor, Kannammai Buildings,
No.611, Anna Salai,
Chennai 600 006.

2. Office of the Income Tax Officer,
Ward I (1), Kancheepuram,
96, M.M. Avenue,
Kancheepuram 631 501.

... Respondents/Respondents

Prayer: PETITION filed under Article 226 of The Constitution of India praying for the issuance of Writ of Certiorarified Mandamus to call for the records of the First Respondent in bearing No.:C.No.22(6)/CIT VIII/2011-12 in PAN No.AIQPM4530P dated 07.03.2013 and quash the same and consequently direct the First Respondent to consider evidence produced by the petitioner.

For Petitioners : Mr.Sandeep Bagmar R.
For Respondents : Mr.A.P.Srinivas,
Senior Standing Counsel.

O R D E R

The petitioners challenge an order passed by the first respondent Commissioner of Income Tax (in short 'CIT') dated

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07.03.2013, under Section 264 of the Income Tax Act, 1961 (in short 'Act') for the Assessment Year AY 2009-10.

2. The assessment of the petitioner was completed after having been taken up at the fag end of the relevant period, by order dated 30.12.2011. The sole addition made relates to credits in the bank account, of a sum of Rs.2,04,69,126/- culled from the Annual Information Report (AIR), as available with the Department. According to the assessee, the component of cash deposits amounted only to a sum of Rs.89,10,900/-.

3. The petitioner admittedly does not maintain books of accounts. At the time of assessment, probably on account of paucity of time, no details/explanation for the credits appear to have been furnished by the petitioner. In the order of assessment, the Officer states that the claims of the assessee could not be verified on account of paucity of time and in the absence of any conclusive evidence having been furnished by the petitioner in support of the transactions appearing in the bank statement. The entirety of the credits, of a sum of Rs.2,04,69,126/- were thus, brought to tax.

4. The petitioner filed a petition for revision before the first respondent, who, vide impugned order merely confirmed the order of assessment.

5. Learned counsel for the petitioners specifically points out that the Karur Vysya Bank in which the petitioner held the account in question had issued certificate dated 30.12.2011 to the effect that out of the entirety of the credits, only a sum of Rs.75,35,900/- had been made in cash. Thus, according to him, only the aforesaid amount could, if at all, be brought to tax and not the entirety of the deposits. Though this bank statement had been produced before the Commissioner, it has not been taken into account in the impugned order.

6. However, and for reasons best known to the assessee, on 26.02.2013, the petitioner has proceeded to withdraw the revision petition filed. Learned counsel for the petitioner argues that notwithstanding that the revision petition had been withdrawn, the Commissioner has proceeded to reject the 264 petition on merits and thus this Court should take into account the merits of the matter as well.

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7. I do not agree. Since the petitioners have decided not to pursue the revision petition, it cannot now agitate the matter on merits. The fact that the Commissioner has considered the matter on merits is only incidental and would make no difference in this regard. At best, the petitioners can be permitted to file an appeal before the Commissioner of Income Tax (Appeals), since the petition under Section 264 has been withdrawn.

8. The provisions of Section 264(4) require that the Commissioner shall not revise any order in a case where the assessee has filed a statutory appeal before the Commissioner (Appeals). The assessee is thus required specifically to waive her right of appeal. In the present case, though the petitioner had initially availed of the revisional remedy, by virtue of the fact that it has withdrawn the petition, the appeal remedy becomes available to it once again.

9. I also note that the identical issue on merits, regarding the taxability of cash deposits, appears to have arisen in the assessment of this very petitioner for the next assessment year, i.e., AY 2010-11. In the order of assessment for AY 2010-11 dated 28.10.2013, the Assessing Officer has himself brought to tax only the cash deposits made, of a sum of Rs.20,89,600/-. Thus prima facie, it does not stand to reason that the amount brought to tax for the previous year on this score should be entirety of the deposits and not merely cash deposits. The order of assessment for the subsequent assessment year, prima facie, supports the case of the petitioner on merits.

10. In fine, this Writ Petition is dismissed, however, granting liberty to the petitioners to file an appeal against the order of assessment dated 30.12.2011 within a period of two (2) weeks from date of receipt of a copy of this order with a petition for condonation of delay, which shall be considered by the Commissioner of Income Tax (Appeals), in accordance with law. In the event the petitioner avails of statutory appeal remedy, such appeal, if admitted by the Commissioner of Income Tax (Appeals), shall be decided independently and without being influenced by the order of the Commissioner of Income Tax, impugned before me.

11. The petitioner has had the benefit of an interim injunction granted on 28.03.2014 upon condition that a sum of Rs.10.00 lakhs be deposited. This order has been complied with as recorded by this Court on 20.06.2014 when the interim injunction granted earlier was extended until further orders.

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The deposit of Rs.10.00 lakhs made by the petitioner shall be adjusted against the final demand as and when computed.

12. Consequently, connected Miscellaneous Petitions are closed. No costs.

s/d-
Assistant Registrar(CS-III)

True Copy

Sub-Assistant Registrar

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To

1. Commissioner of Income Tax,
   Chennai – VIII,
   VI Floor, Kannammai Buildings,
   No.611, Anna Salai,
   Chennai 600 006.

2. Office of the Income Tax Officer,
   Ward I (1), Kancheepuram,
   96, M.M. Avenue,
   Kancheepuram 631 501.

+1 CC to Mr.A.P.Srinivas, Advocate sr 90445.
+1 CC to Mr. Sandeep Kumar, Advocate sr 90156.

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VGII(CO)
SP(13/02/2020)

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