In the High Court of Judicature at Madras

Dated : 10.04.2019

Coram :

The Honourable Dr.Justice ANITA SUMANTH

Writ Petition No.11027 of 2019
& WMP No.11457 of 2019

Vivek Papisetty .... Petitioner

Vs

Deputy Commissioner of Income Tax
Central Circle – 2(4)
Room No.111, 1st Floor,
No.46, Mahatma Gandhi Road,
Nungambakkam,
Chennai – 600 034.

.... Respondent

PETITION filed under Article 226 of The Constitution of India praying for the issuance of Writ of Mandamus directing the respondent to produce Mr.K.Srinivasalu for cross examination in the assessment proceedings initiated pursuant to notices issued under section 153C read with section 153A of the Income Tax Act, 1961 in respect of the petitioners' assessment years 2016-17 and 2017-18 failing which this Court be pleased to direct the respondent not to rely on the sworn statements of Mr.K.Srinivasulu in the said assessment proceedings.

For Petitioner : Mr.AR.L.Sundaresan, S.C.
For Mr.Suhrith Parthasarathy

For Respondent : Mr.A.P.Srinivas
Sr. Standing Counsel

ORDER

Heard Mr.AR.L.Sundaresan, learned senior counsel for Mr.Suhrith Parthasarathy, learned counsel for the petitioner and Mr.A.P.Srinivas, learned Senior Standing Counsel for the respondent.

2. The petitioner is an assessee in terms of the provisions of the Income Tax Act, 1961 (in short 'Act') on the file of the respondent/Assessing Officer. It appears that a search was conducted in the premises of one SRS Mining on 08.12.2016 under section 132 of the Act and pursuant thereto, proceedings for

search was conducted in the premises of the petitioner on 21.12.2016. Depositions by one Mr.K.Srinivasalu appear to have been recorded in the course of search in SRS Mining.

3. The sole apprehension of the petitioner is that proceedings for assessment would be completed without affording opportunity for cross examination of the aforesaid person.

4. The prayer in the Writ Petition is for the issuance of a mandamus directing the respondent to produce the said Mr.K.Srinivasalu for cross examination in the proceedings for assessment, now on-going for assessment years 2016-17 and 2017-18, failing which, there should be a direction to the respondent not to rely on the sworn statements.

5. The prayer, couched as it is, is not acceptable. There can be no direction to the Income Tax Department to produce any person for cross examination. At best a request may be made by the petitioner for cross examination, which will be considered in the light of the principles of natural justice and fair play.

6. I thus mould the prayer to read that a mandamus is sought directing the respondent to permit cross examination of Mr.K.Srinivasalu by the petitioner prior to finalisation of assessment proceedings.

7. Such permission or otherwise will depend on the request made by the petitioner. In the present case, the petitioner has vide letter dated 01.04.2019 filed before the Assessing Officer furnishing various details called for for completion of assessments, referred to the sworn statement recorded from Mr.K.Srinivasalu specifically seeking an opportunity for cross examination of the said individual, prior to completion of assessment.

8. It is a settled position that where a request for cross examination is made prior to completion of assessment proceedings and in the event that the said statement is intended to be relied upon by the Assessing Officer, full opportunity be afforded in this regard prior to completion of assessment proceedings.

9. Thus, seeing as a request has been made before the Assessing Authority, the same will be considered by the respondent in accordance with law. Nothing further need be said in this regard.

10. This Writ Petition is disposed of in the above terms. Consequently, the connected Miscellaneous Petition is closed. No costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

Deputy Commissioner of Income Tax
Central Circle - 2(4)
Room No.111, 1st Floor,
No.46, Mahatma Gandhi Road,
Nungambakkam, Chennai - 600 034.

+1cc to Mr.Arun Karthik Mohan, Advocate, S.R.No.35116
+1cc to Mr.A.P.Srinivas, Advocate, S.R.No. 35463

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RK(CO)
GN(29/05/2019)