IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 11.06.2019

Coram

THE HONOURABLE MR. JUSTICE M.SUNDAR

W.P.No.12940 of 2019
and WMP.No. 13100 of 2019

Mr.Althi Venkata Narendraraju ... Petitioner

vs.

Income Tax Officer
Non-Corporate Ward 22(3)
Tambaram
Chennai-45. ... Respondent

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus, calling for the records comprised in the order of the Respondent under section 271(1)(c) Income Tax Act, 1961, in PAN ACUPN4840M in order number PAN:ACUPM4840M/2014-15 dated 19.03.2019 on the file of the Respondent, quash the same and direct the Respondent to hear the matter afresh after giving the Petitioner an opportunity of being heard.

For Petitioner : Mr.N.V.Balaji

For Respondents : Mrs.Hema Muralikrishnan
Senior Standing Counsel.

ORDER

Mr.N.V.Balaji, learned counsel on record for writ petitioner and Mrs.Hema Muralikrishnan, learned Senior Standing Counsel on behalf of sole respondent are before this Court.

2.This matter is listed under the caption "ADJOURNED ADMISSION" today(11.06.2019).

3.With the consent of both learned counsel, the main writ petition itself is being taken up, heard out and disposed of.

4. In the light of the trajectory which the proceedings pertaining to the Income Tax assessment qua CASS have been taken, the entire matter now turns on a very narrow compass.

5. An order dated 19.03.2019 bearing reference No.PAN ACUPN4840M/2014-15' (hereinafter 'impugned order' for brevity) has been called in question in the instant writ petition by the writ petitioner assessee. The impugned order is one that levies penalty on the writ petitioner assessee under Section 271(1)(c) of the 'Income Tax Act, 1961' (hereinafter 'IT Act' for brevity) and the relevant assessment year is AY 2014 -2015.

6. It is submitted that assessment out of which the impugned order came to be passed was assailed before the Commissioner (Appeals) and thereafter carried to the 'Income Tax Appellate Tribunal' (hereinafter 'ITAT' for brevity).

7. It is submitted that pending proceedings before ITAT, wherein the parent assessment for AY 2014 -2015 itself is under challenge, the impugned order of imposing penalty under Section 271(1)(c) of IT Act came to be passed.

8. Pending writ petition, it is now submitted by both the aforesaid learned counsel without any disputation or disagreement that ITAT has since disposed of the appeal preferred by the writ petitioner/assessee being ITA No.2840/Chny/2018 in and by an order dated 17.05.2019.

9. Suffice to say that by the aforesaid order, the ITAT has remitted the matter back to the original authority i.e., respondent in the instant writ petition.

10. Therefore, both the learned counsel jointly makes a submission in unison that impugned order also deserves to be set aside albeit with a rider that the penalty proceedings can be revived subject to and depending on the outcome of the proceedings before original authority post remand by ITAT qua the parent assessment.

11. In the light of the aforesaid trajectory pending writ petition, particularly the order of ITAT as well as the hearing in the instant case today before this Court, the following order is passed:

a) Impugned order dated 19.03.2019 bearing reference No.PAN ACUPN4840M/2014-15 is set aside.

b) Respondent/original authority, shall first redo the assessment pursuant to the aforesaid remand order passed by ITAT in ITA No.2840/Chny/2018 dated 17.05.2019.

c) Post assessment, in accordance with the remission made by the ITAT subject to outcome of the assessment proceedings before the respondent and obviously depending on the assessment, it is open to the respondent to initiate penalty proceedings afresh.

With the above direction, instant writ petition is disposed of. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Deputy Registrar (CJ Conf.,)

//True Copy//

Sub Assistant Registrar

mp/rm

To

Income Tax Officer
Non-Corporate Ward 22(3)
Tambaram
Chennai-45.

+1 cc to Mr.N.V.Balaji, Advocate, S.R.No.47201

+1 cc to M/s.Hema Muralikrishnan, Advocate, S.R.No.47162

W.P.No.12940 of 2019
and WMP.No. 13100 of 2019

RSI(CO)
SSM(03/07/2019)