IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 05.12.2019
CORAM
THE HONOURABLE DR. JUSTICE ANITA SUMANTH
W.P.No.15775 of 2018
& WMP.No.18756 of 2018

M/s.Ram Krishan Kulwant Rai Holding P. Ltd.
Represented by its Director
Mr.Joseph Philip ...Petitioner

--Vs--

1.Principal Commissioner of Income Tax
Central-2
No.46, Investigation Wing
Mahatma Gandhi Road
Chennai-600034
2.Assistant Commissionre of Income Tax
Central Circle-2(3),
No.46, Mahatma Gandhi Road,
Nungambakkam, Chennai-600034 ...Respondents

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Prayer: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ or order of direction or any other Writ in the nature Writ of Certiorari, calling for the records on the file of the 1st respondent in C.No.2744/C-2/2018-19 dated 11.06.2018 under Section 263 of the income Tax Act, 1961 and quash the same.

For Petitioner : Mr.R.Sivaraman
For Respondents: Mr.A.P.Srinivas
Senior Standing Counsel

O R D E R

The petitioner challenges order dated 11.06.2018 passed by the Principle Commissioner of Income Tax, proposing to initiate penalty in terms of Section 27(1)(c) of the Income Tax Act, 1961 (in short 'Act') in respect of assessment year 2009-10, by invocation of provisions of Section 263 of the Act.

2. Heard Mr.R.Sivaraman, learned counsel for the petitioner and Mr.A.P.Srinivas, learned Senior Standing Counsel for the respondents.

3. The show cause notice has necessarily to be quashed for the following reasons:

(i) the order of assessment originally passed on 30.03.2016, admittedly, does not contain the satisfaction of the Assessing Officer initiating proceedings for penalty in terms of Section 271(1)(c) of the Act.

(ii) The above order of assessment has travelled in appeal and Tax Case (Appeal) No.391 of 2019, filed by the Income Tax Department, has been dismissed. This order has attained finality.

(iii) The impugned show cause notice proposes the initiation of penalty on the ground that the Assessing officer has not initiated penalty proceedings in order dated 30.06.2016. The provisions of Section 271(1) of the Act call for the satisfaction of the Assessing Officer/Commissioner (Appeals)/ or Commissioner, recorded 'in the course of any proceeding under this Act' for the levy of penalty. Thus, while the Principle Commissioner or Commissioner could well initiate penalty under Section 271(1) of the Act if he proposed to effect modifications to the assessment itself, he cannot, in law substitute his satisfaction for that of the Assessing Officers' for levying penalty in regard to the modifications to income effected in original assessment.

4. This tantamounts to the Commissioner putting himself the shoes of the Assessing Officer who had passed the original order of assessment in 2016 and is impermissible in law.

5. In arriving at this conclusion, I draw support from an order of a Division Bench of this Court in Commissioner of Income Tax Vs. C.R.K.Swami [254 ITR 158] to the following effect:

> The order of the Tribunal holding that the addition to income was not justified, having become final, the Tribunal's order holding that the revision of assessment by the Commissioner on the ground that penalty proceedings had not been initiated was unsustainable, in the circumstances, is an order which is required to be upheld.

6. This writ petition is allowed and the impugned show cause notice quashed. Consequently, connected miscellaneous petition is closed with no order as to costs.

Sd/-
Asst.Registrar (CO)

/true copy/
Sub Asst. Registrar

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To

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Central-2
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Mahatma Gandhi Road
Chennai-600034

2.Assistant Commissionre of Income Tax
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