IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.11.2019

CORAM

THE HON'BLE MR. JUSTICE K.RAVICHANDRABAABU

W.P.No.31801 of 2019
and
W.M.P.Nos.32038, 32039 & 32061 of 2019

Caterpillar India Private Limited
7th Floor, International Tech Park Chennai
Taramani Road, Taramani, Chennai-600 113.
PAN : AABCC4615K
Represented by its Director
Mr.Ramanathapuram Sethuraman Chidambaram ...Petitioner

vs.

1. The Assistant Commissioner of Income Tax
   Larger Taxpayer Circle-1
   Room No.712, 7th Floor, Wanaparthy Block
   Aaykar Bhawan, Nungambakkam, Chennai-600 034.

2. The Commissioner of Income Tax
   Large Taxpayer Unit-I
   1775, Jawaharlal Nehru Inner Ring Road
   Anna Nagar, Western Extn., Chennai-600 101.
   ...Respondents

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, to call for the records maintained by the respondents 1 and 2 including the impugned notice bearing No.ITBA/AST/S/148/2018-2019/1015453341(1) dated 27.03.2019 for the assessment year 2012-2013 and all proceedings pursuant thereto and quash the same.

For Petitioner : Mr.Percy J.Pardivala
Senior Counsel for
Mr.Prahalad Dhat

For Respondents : Mrs.Hema Muralikrishnan
Senior Standing Counsel

O R D E R

Mrs.Hema Muralikrishnan, learned Senior standing counsel takes notice for the respondents. By consent of both parties, the main writ petition is taken up for final disposal at the admission stage itself.

2. This writ petition is filed challenging the notice dated 27.03.2019 issued under Section 148 of the Income Tax Act, 1961, for the assessment year 2012-2013.

3. Heard Mr.Percy J.Pardivala, learned Senior Counsel appearing for the petitioner and Mrs.Hema Muralikrishnan, learned Senior standing counsel appearing for the respondents.

4. Since the issue involved in this case lies in a narrow compass and that the said issue can be considered and decided without a counter pleadings, based on the submission made by the learned Senior standing counsel for the respondents, this Court is inclined to dispose the writ petition itself at the admission stage.

5. For the assessment year 2012-2013, a notice dated 27.03.2019 under Section 148 of the Income Tax Act, 1961, was issued on the petitioner contending that the Assessing Officer has reasons to believe that the Assessee's income chargeable to tax for the assessment year 2012-2013 has escaped assessment within the meaning of Section 147 of the Income Tax Act, 1961. The petitioner through communication dated 01.04.2019 followed by another communication dated 30.04.2019 requested the Assessing Officer to furnish the reasons for reopening. Accordingly, by communication dated 23.05.2019, the Assessing Officer furnished the reasons recorded for reopening the assessment. It is stated therein that the Assessee had claimed additional depreciation on P&M aggregating to Rs.46,14,46,271/- and that the said additional depreciation on the additions made on the P&M acquired through slump sale from CLSIPL needs to be disallowed. The petitioner, through communication dated 19.06.2019, received at the office of the Assessing Officer on 20.06.2019, made their objections against the above said reasons for reopening. However, the Assessing Officer through another communication dated 02.08.2019, furnished additional reasons to be included in the original reasons submitted through communication dated 23.05.2019. In the additional reasons, the Assessing Officer informed that he has tangible evidence that the petitioner has shifted profits and the same is confirmed by the US report on the same issue, which clearly shows the shifting of billions of dollars of profits using such transactions. On receipt of such communication, the petitioner through

communication dated 13.08.2019, sought further time to give reply/objections. Again on 27.08.2019, the petitioner sent a detailed communication to the Assessing Officer requesting him to dispose the objections already filed by them in respect of the reason No.1 and also to provide a reasonable time for responding to the reason No.2. It is stated that the petitioner has already sought for certain details from the Assessing Officer including the statements said to have been obtained from two employees of the petitioner-Company, which were relied on by the Assessing Officer for issuing second reason for reopening. Therefore, it is contended by the learned Senior Counsel that unless those informations are provided, the petitioner will not be in a position to file objections to the second reason. As the Assessing Officer has not provided any information so far and also not passed any order on the request of the petitioner dated 27.08.2019, the present writ petition is filed challenging the very reopening of the assessment.

6. The learned Senior standing counsel appearing for the Revenue submitted that since the Assessing Officer has furnished two reasons for reopening, the petitioner can file their objections so as to enable the Assessing Officer to consider the same and pass orders on merits and in accordance with law on those objections. However, he is not disputing the fact that the communication sent by the petitioner on 27.08.2019 has not been disposed of by the Assessing Officer so far and therefore, the same will be considered and appropriate orders will be passed within a reasonable time.

7. Consideration of the above stated facts and circumstances, without going into the merits of the contentions raised by both parties in respect of reopening of the assessment, would show that the Assessing Officer has provided two reasons for reopening the assessment, as discussed supra, one after another, and that the petitioner has given objections only in respect of first reason and yet to file their objections in respect of second reason. According to the petitioner, for filing such objections for the second reason, they need some information and for which purpose, they have already made a request before the Assessing Officer on 27.08.2019 and that the said request is yet to be considered by the Assessing Officer.

8. This Court at this stage is not expressing any view on the merits of such claim made by the petitioner through communication dated 27.08.2019, since it is for

the Assessing Officer to consider and decide the same. Admittedly, the said request of the petitioner is yet to be disposed of. Therefore, this Court is inclined to dispose the present writ petition without touching upon the merits of the claim made by the petitioner against reopening only with a direction to the Assessing Officer to pass appropriate orders on merits and in accordance with law on the request made by the petitioner dated 27.08.2019 within a period of three weeks from the date of receipt of a copy of this order. Based on the communication received from the Assessing Officer, the petitioner shall work out their remedy in the manner known to law.

9. With the above observation, this Writ Petition is disposed of, accordingly. Since this Court has directed the Assessing Officer to dispose of the representation dated 27.08.2019 within a period of three weeks from the date of receipt of a copy of this order, the Assessing Officer is directed not to precipitate the matter further by passing an order of assessment, since the outcome of the order to be passed on the request made by the petitioner dated 27.08.2019 will have a bearing on the Assessee, for filing their objections on the second reason. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(insp cell)

//True Copy//

Sub Assistant Registrar

mk
To

1. The Assistant Commissioner of Income Tax
Larger Taxpayer Circle-1
Room No.712, 7th Floor, Wanaparthy Block
Aaykar Bhawan, Nungambakkam, Chennai-600 034.

2. The Commissioner of Income Tax
Large Taxpayer Unit-I
1775, Jawaharlal Nehru Inner Ring Road
Anna Nagar, Western Extn., Chennai-600 101.

+1cc to Mr.V.Venkatachalam , Advocate SR.No. 94754
+1cc to Mrs.Hema Muralikrishnan , Advocate SR.No. 93727

W.P.No.31801 of 2019

A.SK(15/11/2019)