IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.11.2019

CORAM

THE HON'BLE MR.JUSTICE K.RAVICHANDRABAABU

W.P.NO.32203 OF 2019
AND
W.M.P.NOS.32480 & 32482 OF 2019

M/s. Kandan & Kannan Medical Agency,
Represented by its Partner
No.722, P.H.Road, Aminjikarai,
Chennai - 600029. ...Petitioner

Vs.

The Income Tax Officer,
Non Corp Ward 10(2),
Chennai - 600034. ...Respondent

Prayer :
Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari to call for the records of the respondent in his proceedings in Order No.ITBA/AST/S/144/2019-20/1018316821(1) quash the assessment order dated 26.09.2019 passed therein in relation to the Assessment Year 2017-18.

For Petitioner : Mr.P.V.Sudakar

For Respondent : Mr.Prabhu Mukunth
Arun Kumar
Standing Counsel

ORDER

The petitioner is aggrieved against the Assessment Order dated 26.09.2019 passed under Section 144 of the Income Tax Act, 1961. Since the issue raised in this writ petition can be considered and decided based on the materials available before this Court as on this day, without filing a counter by the respondent, this writ petition itself is taken up for final disposal and decided as hereunder.

2. The case of the petitioner is as follows :-

The petitioner is engaged in the business of wholesale and retail sale of veterinary medicines as a partnership firm. In respect of the Assessment Year 2017-18, the income-tax returns were not filed in time due to certain disputes/differences between the partners. The respondent issued a notice dated 14.02.2018 under Section 142(1) of the Income Tax Act, 1961 calling upon the petitioner to file the return of income for the Assessment Year 2017-18. By the time the return of income filed, the respondent proceeded to issue a notice dated 07.06.2019 under Section 144(1) of the Income Tax Act, 1961. In the said notice, the respondent stated that the FIU return filed by the Bank of Maharashtra reveals cash deposits of Rs.15,69,000/- in the account of the petitioner during demonetization period and that in the absence of filing of return of income in terms of Section 142(1) of the Income Tax Act, it was proposed to treat cash deposits as unexplained money under Section 69A of the Income Tax Act. Subsequently, the petitioner filed its return on 26.07.2019 and by letter dated 30.07.2019 enclosed copy of e-acknowledgment along with annual accounts and tax audit reports of the petitioner. While so, without any further notice or hearing, the respondent has proceeded to pass a best judgment assessment order dated 26.09.2019 under Section 144 of the Income Tax Act. While passing the impugned assessment order, apart from treating the cash deposits during the demonetization period as unexplained money and assessing the same under Section 69A of the Act, the respondent has rejected the net profit of Rs.3,35,340/- declared in the accounts as very lowand proceeded to estimate the business income at 8% of Turn Over of Rs.4,20,74,190/- and added the same to the total income of the petitioner under the head business income. Before making such assessment of the business income at 8% of the total Turn Over, the respondent did not issued any notice calling for explanations nor affording an opportunity of hearing to the petitioner. Therefore, the present writ petition is filed.

3. The learned counsel appearing for the petitioner after inviting this Court's attention to the notice issued under Section 142(1) of the Income Tax Act dated 14.02.2018 followed by the show cause notice dated 07.06.2019, submitted that the only issue for which the Assessing Officer has chosen to call upon the petitioner to show cause, was with regard to the deposits made in the petitioner's Bank account during the demonetization period in respect of a sum of Rs.15,69,000/- and that the issue regarding an addition on account of business income was not the issue referred to in the show cause notice at all. Therefore, he contended that without issuing any show cause notice on the other issue namely addition on account of business income, the Assessing Officer proceeded to pass the impugned order on that issue as well and therefore, he violated the

principles of natural justice.

4. The learned counsel appearing for the Revenue based on instructions submitted that in the show cause notice, it is specifically stated that the petitioner failed to file the return in time for the Assessment Year 2017-18 and thereafter, the impugned order was passed. However, he is not disputing the fact that in the said show cause notice, the second issue namely an addition on account of business income was not referred to.

5. Heard both sides and perused the materials placed before this Court.

6. The impugned assessment order under Section 144 was passed in respect of two issues viz., as under :-

(1) Addition under Section 69A of the Income Tax Act :- The assessee-firm has made a cash deposit of Rs.15,69,000/- in the Current account number maintained by the petitioner with Bank of Maharashtra, Shenoy Nagar Branch, during the demonetization period.

(2) Addition on Account of Business Income :- The Assessing Officer found that the total sales made by the assessee-firm during the Financial Year 2016-17 was Rs.4,20,74,190/- whereas, net profit declared was Rs.3,35,340/- which is 0.80% only and thus, very low when compared to normal/reasonable income that will be generated in the similar line of business. Therefore, the Assessing Officer remitted the business income of the assessee-firm at 8% of Turn Over of Rs.4,20,74,190/- which works out to Rs.33,65,935/- and added the same to the income of the assessee-firm under the head business income.

7. The grievance of the petitioner before this Court is that though, a show cause notice was issued by the Assessing Officer in respect of the first issue namely the cash deposit in the Current Account during the demonetization period, no show cause notice was issued in respect of the other issue viz., an addition on account of business income. Therefore, it is contended that the Assessing Officer is not justified in passing the order of assessment in respect of the other issue as well, without issuing any notice to the petitioner.

8. I find force in the above contention of the petitioner, going by the show cause notice dated 07.06.2019 as well as the earlier notice issued under Section 142(1) dated 14.02.2018.

9. Perusal of the show cause notice clearly indicates that the only issue chosen by the Assessing Officer to call upon the petitioner to show cause, was with regard to cash deposits made during the demonetization period. No doubt, it is admitted by

the learned counsel for the petitioner that the petitioner did not file any reply to the show cause notice. However, it is seen that the petitioner has filed a belated return where, it is stated that the petitioner has given details as to how such cash deposits were made in the Current Account. In any event insofar as the second issue, namely an addition on account of business income, is concerned, admittedly, the assessment made on such issue was not preceded by any show cause notice.

10. Therefore, this Court is of the view that it is better the matter is remitted back to the Assessing Officer for redoing the assessment once again, after getting a reply from the petitioner in respect of both the issues, apart from the belated return filed already.

11. Since this Court has remitted the matter back to the Assessing Officer for redoing the assessment once again on both the issues also by directing the petitioner to file the reply to both the issues, a fresh show cause notice need not be issued to the petitioner in respect of the second issue viz., an addition on account of business income. Accordingly, this writ petition is allowed and the impugned assessment order is set aside. Consequently, the matter is remitted back to the Assessing Officer to redo the assessment on the following terms :-

(a) The petitioner shall file their reply within a period of two weeks from the date of receipt of a copy of this order in respect of both issues.

(b) On receipt of such reply, the Assessing Officer shall pass fresh order of assessment on merits and in accordance with law, as this Court is not expressing any view on the merits of the assessment in respect of both the issues, since it is for the Assessing Officer to consider and decide.

(c) The whole exercise shall be done by the Assessing Officer within a period of eight weeks from the date of receipt of the reply.

(d) The Assessing Officer shall afford an opportunity of personal hearing to the petitioner before concluding the assessment.

No costs. Connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

sni

To

The Income Tax Officer,
Non Corp Ward 10(2),
Chennai - 600034.

+1cc to Mr.P.V.Sudakar, Advocate, S.R.No.95939
+1cc to Mrs.Hema Muralikrishnan, Advocate, S.R.No.96095

W.P.No.32203 of 2019

KK(CO)
CS/26/12/2019