BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 18.07.2019
CORAM
THE HONOURABLE DR.JUSTICE ANITA SUMANTH
W.P(MD)No.14016 of 2010
and
M.P.(MD)No.1 of 2010

Tvl.Vaibhav Corporation,
Rep.by its Partner S.Sanjivi,
No.161, Kamarjar Salai,
Madurai. ... Petitioner

Vs.

The Assistant Commissioner (CT) (FAC),
Kamarajar Salai Circle,
Madurai. ... Respondent

RAYER: Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of writ of Certiorari, to call for the records in TIN.33304822039/2008-2009 dated 23.08.2010 on the file of the respondent and quash the same as illegal, arbitrary, without jurisdiction and against the rule of law.

For Petitioner : Mr.S.Karunakar
For Respondent : Mrs.J.Padmavathy Devi
Special Government Pleader

ORDER

The petitioner herein is a firm. There was a search initiated by the Income Tax Department on 28.04.2008. In the course of search certain statements appeared to have been recorded from an erstwhile employee of the petitioner firm. Seizure of an amount of Rs.41,25,850/- was also effected. The statement recorded from the employee appears to be the basis of the assessment in terms of the provisions of the Income Tax Act, 1961 (in short 'Act') bringing the amount seized, to tax as unexplained investment in the hands of the firm. The firm challenged the assessment in appeal and succeeded before the first appellate authority, the Commissioner of Income Tax filed (Appeals) whereupon the revenue filed further appeal before the Income Tax Appellate Tribunal. The appeal filed by the revenue was dismissed by order dated 14.03.2013.

2. The learned Special Government Pleader was requested to verify whether the aforesaid order had attained finality and she reports that to the best of her enquiry, no appeal appears to have been filed before this Court in terms of Section 260 A of the Act. Thus, the Court proceeds on the basis that the order of the Income tax Appellate Tribunal has attained finality.

3. The impugned order of assessment passed in terms of the Tamil Nadu Value Added Tax Act, 2006, dated 23.08.2010 for the period 2008-2009, is based entirely on the seizure effected by the Income Tax Department. The impugned order refers to the circumstances under which the seizure was effected on 28.04.2008, the statements recorded from the employee of the firm, and the exchange of communication *inter se* the partners and the Deputy Commissioner of Income Tax.

4. In conclusion, the Assessing Authority / respondent herein proceeds on the basis that the amount seized represents suppressed sales turnover and brings to tax the aforesaid amount, along with penalty of 150% therein.

5. The income tax proceedings culminating with the order of the Income tax Appellate Tribunal have established the position that the amount is not unexplained investment. Be that as it may, in order to bring to tax any amount as turnover in terms of the provisions of the applicable Sales Tax Law, it is incumbent upon the Assessing Authority to ensure that the amount satisfies the definition of 'turnover' as per the relevant Statute. In this case, the Assessing Authority merely proceeds on the basis of the Income Tax proceedings, which in my considered view is only one of the factors that may be relevant but cannot form the entire basis of an assessment under the provisions of the Value Added Tax Act. In this view of the matter the impugned order of assessment dated 23.08.2010 is quashed and this writ petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar ()

// True Copy //

Sub Assistant Registrar(CS)

To

The Assistant Commissioner (CT) (FAC),
Kamarajar Salai Circle,
Madurai.

+1 CC to Mr.S.KARUNAKAR, Advocate SR-76212.
+1 CC to SPL GP SR-76596.

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