BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 02.01.2019
CORAM
THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN
W.P.(MD)Nos.18610 & 18612 of 2015 and
M.P.(MD)Nos.1 & 1 of 2015

S.K.Ramkumar,
Civil Works Contractor,
10-G, Singarayar Colony North Street,
Bibikulam,
Madurai – 2. ... Petitioner in both petitions

Vs.

The Assistant Commissioner(C.T.),
Chokkikulam Assessment Circle,
Madurai - 20. ... Respondent in both petitions

COMMON PRAYER : Writ Petitions are filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, calling for the records on the file of the respondent in TIN 33215001296/2007-08 and TIN 33215001296/2009-10, dated 14.08.2015 and quash the same as invalid, illegal and against the principles of natural justice.

(in all W.Ps.)
For Petitioner : Mr.A.Chandrasekaran
For Respondent : Mr.Aayiram K.Selvakumar, Additional Government Pleader.

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C O M M O N O R D E R

The petitioner is a civil works contractor. The subject matter pertains to two assessment years, namely, 2007-2008 and 2009-2010. The petitioner had filed his returns and they were assessed on a deemed assessment basis. Subsequently, pre-revision notices were issued and orders dated 28.02.2013 were passed under Section 27(1) of the T.N.V.A.T. Act. The petitioner did not contest the said orders revising the assessment. Thereafter, for the second time, pre-revision notices were issued under the very same provision, namely, Section 27(1) of the T.N.V.A.T. Act. The petitioner offered his reply. Not satisfied with the same, the orders impugned dated 14.08.2015 came to be passed. Challenging the same, these Writ petitions have been filed.

2. Heard the learned counsel appearing for the Writ petitioner and the learned Additional Government Pleader appearing for the respondent.

3. The respondent would contend that the Writ petitioner wrongly included certain expenses and claimed exemption. In respect of the assessment year 2007-2008, the following claim had been made:-

2) They had wrongly included the following expenses in the head of labour expenses and claimed exemption.

Excavation charges	..	Rs.26,00,120-
Labour Welfare Charges	..	Rs. 3,70,140-
Tender Expenses	..	Rs. 4,63,430-
Travel Expenses	..	Rs. 1,15,600-
Postage Expenses	..	Rs. 45,500-
Printing Expenses	..	Rs. 25,120-
Sales Tax Recovery	..	Rs. 2,14,191-
General expenses	..	Rs.18,88,643-
Audit Fees	..	Rs. 10,000-
Total	..	Rs.57,33,344- @ 4%

For the assessment year 2009-2010, the following claim was made.

2) They had wrongly included the following expenses in the head of labour expenses and claimed exemption.

Labour Welfare Charges	:	Rs. 4,72,150-
Tender Expenses	:	Rs. 3,77,720-
Travel Expenses	:	Rs. 83,600-
Postage Expenses	:	Rs. 58,600-
Printing Expenses	:	Rs. 58,930-
Staff Salary	:	Rs. 2,50,600-
Sales Tax Recovery	:	Rs. 1,88,112-
Audit Fees	:	Rs. 6,000-
General Expenses	:	Rs.18,17,280-
Total	:	Rs.33,11,192- @ 4%

4. According to the respondent, this claim ought not to have been allowed. Therefore, the respondent wanted this Court to sustain the orders impugned in these Writ petitions.

5. As rightly contended by the learned counsel appearing for the petitioner, the petitioner had filed his returns and they were assessed on a deemed basis. They were subjected to revision under Section 27(1) of the T.N.V.A.T. Act and the orders were passed on 28.02.2013. This is second revisional exercise. As rightly pointed out by the learned counsel appearing for the petitioner, on a mere change of opinion, such an exercise cannot be undertaken. The petitioner had made certain claims. The assessing authority in the first instance thought it fit to allow the same. Even when the assessment was subjected to a revisional exercise, the assessing

authority did not deem it fit to change his opinion. Therefore, there cannot be one more revisional exercise undertaken in respect of the very same assessment. If at all, the Joint Commissioner exercising powers under Section 53 of the T.N.V.A.T. Act could have initiated proceedings in this regard. But in this case, the very same assessing officer has chosen to undertake the second revision. This is impermissible in law. It is not the case of the respondent that the Writ petitioner had indulged in suppression of material facts. This cannot be characterised as a case of escaped assessment. All the materials were very much available from the beginning. No new material was discovered warranting one more revision under Section 27 of the Act.

6. This Court posed a specific question to the learned Additional Government Pleader as to when the audit objection was made. There is no response to this query. The learned counsel appearing for the petitioner states that when he made an application for refund, the second revisional exercise was undertaken. I am therefore of the view that the very exercise is without jurisdiction.

7. In this view of the matter, the orders impugned in these Writ petitions stand set aside. The Writ petitions stand allowed, accordingly. No costs. Consequently, connected Miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

Sub Assistant Registrar(CS)

To
The Assistant Commissioner(C.T.),
Chokkikulam Assessment Circle,
Madurai - 20.

+1 CC to M/s.A.CHANDRASEKARAN, Advocate SR-40069.

+1 CC to SPL GP SR-40156.

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(1/2)

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