BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 18.06.2019

CORAM:

THE HONOURABLE DR.JUSTICE ANITA SUMANTH

W.P.[MD]No.4208 of 2013

and

M.P.[MD]No.1 of 2013

K.P.S. Enterprises a partnership firm,
Represented by its Partner,
Shri.K.P.Alagarsamy, 184/2, Bye Pass Road,
Madurai - 625 016. ... Petitioner

Vs.

Commissioner of Income Tax-I,
Madurai - 625 002. ... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorarified Mandamus, calling for the records in the matter of assessment of the petitioner in file No.AAKFK1539J and revision petition in File C.No.407/01/CIT-I/2011-12 and quash the order dated 22.02.2012 of the Commissioner under Section 264 and restore the matter to the respondent with a direction to consider de novo the entire facts.

For Petitioner : Mr.R.Srinivasan

For Respondent : Mrs.S.Srimathy
Standing Counsel

O R D E R

The petitioner is a partnership firm comprising five (5) partners that carry on the business of development of real estate. In respect of assessment year 2007 - 2008, a notice under Section 148 of the Income tax Act, 1961 [In short, 'Act'] was received and an assessment completed by the assessing authority, bringing to tax a sum of Rs.1,87,81,234/- as unexplained investment in purchase of property, in terms of Section 69 of the Act.

2. The defence of the petitioner was that the property belonged to the individual partners and did not constitute a partnership asset. The firm submitted that the property in question had been purchased from a mortgagor in satisfaction of mortgage debt in their capacity as co-owners. This was sought to be established by reference to sale deed dated 03.04.2006,

registered as Document No.879 of 2006. Moreover, the balance consideration had been paid by the partners by way of a loan taken from ING Vysya Bank. These facts emanate *prima facie* from a reading of the aforesaid sale deed.

3. Notwithstanding this, an order of assessment dated 22.02.2012 had come to be passed bringing to tax the aforesaid sale consideration as unexplained income in the hands of the petitioner firm.

4.The petitioner filed an application for revision of the aforesaid order before the Commissioner of Income Tax under Section 264 of the Act, who by the impugned order dated 22.02.2012, rejected the same. The Commissioner of Income Tax confirms the order of assessment on the ground that the books of accounts have not been produced before the Assessment Officer in the course of proceedings for assessment.

5.As far as the specific contention of the petitioner that the property belonged to the partners and hence could not be treated as a partnership asset is concerned the Commissioner merely observes and concludes that the documents produced before him and the oral submissions of the partners lead him to conclude that the property had been jointly purchased by five partners of the firm. On this ground, he rejects the submissions of the firm and the petition seeking revision of assessment.

6.I am of the view that the issue of ownership of the property has not been appreciated by the respondent in proper perspective. The Commissioner himself states at paragraph 4 (internal page 3) of the impugned order that the property has been jointly purchased by all five partners of the firm. How he arrives at this conclusion is unclear. No doubt, the property could have been jointly purchased. However, that by itself does not make it a partnership asset. The transaction thus ought to have been examined especially in the context of ownership, that is, whether, the same had been purchased using the funds of the firm or the funds of the individuals and whether the ownership vests in the name of the firm or the joint name of the partners.

7.In the light of the fact that the impugned order is bereft of any proper reasoning for confirmation of the order of assessment dated 22.02.2012, I am of the view that this issue be re-visted and examined by the Commissioner, after taking into account the submissions of the assessee and any supporting evidences that may be produced before him in this regard.

8.The impugned order is thus set aside and the matter is remanded to the file of the Commissioner of Income Tax, who will hear the petitioner *de novo* and pass a speaking order. This Writ Petition is disposed of, in the aforesaid terms. Seeing as the matter relates to an order of assessment of the year 2011-12, this exercise shall be completed within six weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS-II)

// True Copy //

Sub Assistant Registrar(CS)

TA/MR

To
The Commissioner of Income Tax-I,
Madurai – 625 002.

+1CC TO MR.R.SRINIVASAN, Advocate Sr. No.69532
+1CC TO MR.S.SRIMATHY, Advocate Sr. No.69571

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SSS(CO)
TR (28.08.2019) 3P 4C