IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 02.01.2020
CORAM
THE HONOURABLE MR. JUSTICE C.SARAVANAN
Writ Petition No.10842 of 2016

M/s.Vasan Healthcare Private Ltd.,
Rep. by its Chairman & Managing Director,
Dr.A.M.Arun, Son of A.R.Murugaiah,
15-A, Main Road, Thillai Nagar,
Trichy - 620 018. ... Petitioner

Vs.

The Principal Commissioner of Income-Tax,
Central-2,
No.46, Investigation Wing,
Mahatma Gandhi Road,
Nungambakkam,
Chennai - 600 034. ... Respondent

Prayer: Writ petition is filed under Article 226 of the Constitution of India to issue Writ of Certiorari calling for the records in No.2527/Audit (LAR)/C-2/15-16/Try dated 07.03.2016 on the file of the respondent relating to Assessment Year 2009-10, quashing the same.

For Petitioner : Mr.M.P.Senthilkumar
For Respondent : Mr.A.N.R.Jayaprathap
Standing counsel for Tax

ORDER

The petitioner has challenged the impugned notice issued under Section 263 of the Income Tax Act, 1961 seeking to re-open the assessment order dated 31.03.2015.

2. The contention of the petitioner is that the respondent had no basis to come to the conclusion that the orders have been passed erroneously or to dis-prejudice of the revenue. It is submitted that all the issues raised in the order dated 31.03.2015 were pursuant to a notice issued under Section 148 of the Income Tax Act on 24.03.2014.

3. The learned counsel for the petitioner submits that there is no jurisdiction to invoke Section 263 of the Income Tax Act. He further relies on the following decisions:

(i) 293 ITR 001 (S.C) Commissioner of Income Tax - Vs- Alagendran Finance Ltd.

(ii) 243 ITR 083 (S.C.) Malabar Industrial Co. Ltd. - Vs - Commissioner of Income Tax.

(iii) 119 ITR 996 (SC) Indian and Eastern Newspaper Society - Vs- Commissioner of Income Tax.

4. Per contra, the learned counsel for the respondent submits that this writ petition is liable to be dismissed, since the petitioner has an alternate remedy to participate in the adjudicatory mechanism in the impugned proceeding under Section 263 of the Income Tax Act. Therefore, the Writ Petition is liable to be dismissed.

5. Heard the learned counsel for the Petitioner and the learned counsel for the Respondent.

6. I have perused the impugned order. The assessment order passed on 31.03.2015 for the assessment year 2014-15 has not clearly discussed the issue. Instead, it has accepted the returns filed by the petitioner based on the decision of this Court without actually discussing how the revised returns filed by the petitioner under Section 143 (3) of the Income Tax Act was acceptable. At the same time, it is for the petitioner to establish before the respondent as to whether the invocation of Section 263 was justified or not. Hence, I am of the view, that the petitioner can be directed to participate in the adjudicatory mechanism prescribed under the Act.

7. Therefore, the petitioner is directed to file its reply to the impugned notice within 30 days from the date of receipt of this order. The respondent shall pass an appropriate order within a period of 30 days thereafter. It is made clear that the petitioner shall be heard before an order is passed on merits, in accordance with law.

8. In view of the same, the Writ Petition is dismissed. No costs.

Sd/-
Asst.Registrar (CS III)

/true copy/
Sub Asst. Registrar

drl

To

The Principal Commissioner of Income-Tax,
Central-2,
No.46, Investigation Wing,
Mahatma Gandhi Road,
Nungambakkam,
Chennai - 600 034.

+1 cc to M/s.G.Susheela Advocate sr234
+1 cc to M/s.A.P.Srinivas Advocate sr510

W.P.No.10842 of 2016

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