IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 05.02.2020
CORAM
THE HONOURABLE Dr. JUSTICE ANITA SUMANTH
W.P.No.2668 of 2020 and
WMP.Nos.3094 & 3108 of 2020

ChandroPrrocess,
Represented by its Partner,
E.A.Arumugam,
No.151/2, Pachankattupalayam,
Arulpuram, Veerapandi Post,
Tirupur - 641 605. .. Petitioner

Vs.

The Deputy Commissioner of Income Tax,
Office of the Deputy Commissioner of Income Tax,
Circle-II, Tirupur. .. Respondent

Prayer:- Writ Petition filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorari, calling for the records on the files of the respondent in ITBA/AST/S/143(3)/2019-20/1023417682(1) dated 30.12.2019 and quash the same.

For Petitioner : Mr.R.Senniappan

For Respondent : Mr.A.P.Srinivas,
Senior Standing Counsel

ORDER

The petitioner has challenged an order of assessment dated 30.12.2019 for Assessment Year (AY) 2017-18 passed in terms of the provisions of the Income Tax Act, 1961 (in short 'Act').

2. Two disallowances have been effected, the first in terms of Section 40A(3) of the Act that deals with 100% disallowance of expenditure in cash, in excess of a permitted limit. It was the case of the petitioner that the cash payments related to purchase of fire wood and that the same are covered by the provisions of Rule 6 DD of the Income Tax Rules, 1962 which carve out certain expenditures to the rigour of Section 40A(3) where the cash payments relate to specified categories. One of the exceptions relate to purchases of agricultural or forest produce or produce of Animal Husbandry or diary poultry farming or fish and fish products or the products of horticulture or apiculture, where the payments had been made to the cultivator,

grower or producer of such articles, produce or products.

3. Reliance upon Rule 6DD was rejected by the Assessing Officer quoting the procedure followed for purchase of fire wood through open bidding system. The Officer states that no farmer sells fire wood directly in the open market and hence the protection under Rule 6DD would not be available to the petitioner.

4. In addition, certain credits appearing in the bank accounts of the petitioner were proposed to be disallowed under Section 68 of the Act. The petitioner explained the same as being loans advanced by twelve creditors for medical treatment of Sadasivam V A, stated to be a partner in the petitioner firm. This explanation was also disbelieved on the ground that the petitioner had not established identity of the creditors, their capacity to advance money or the genuineness of the transaction.

5. Both the issues dealt with above require an examination of facts and hence this is not an appropriate case for interference under Article 226 of the Constitution of India.

6. Learned counsel states that adequate opportunity was not granted to the petitioner prior to completion of assessment. My attention is drawn to the medical records of VA Sadasivam to establish the need for emergency treatment and expenses incurred when the partner had met with a serious accident.

7. The petitioner is relegated to statutory appellate remedy. The order of assessment may be challenged by way of first appeal before the Commissioner of Income Tax (Appeals) within a period of three weeks from today. If the appeal is filed within the period as aforesaid, the same shall be taken on file by the office of the Commissioner (Appeals) and disposed on merits and in accordance with law, without reference to limitation.

8. Since the powers of the Commissioner (Appeals) are co-terminus with that of the Assessing Officer, a proper enquiry be conducted as to the veracity or otherwise of the explanations tendered by the petitioner both in response to the proposal under Section 68 of the Act as well as the applicability of Rule 6DD to the disallowance under Section 40A(3). Let an order of assessment be passed de novo within a period of three months from date of institution of appeal, after hearing the petitioner. Recovery of the disputed demand shall not be insisted upon till disposal of appeal. In the event the appeal is not instituted within the time frame as aforesaid, the order

of assessment now impugned shall be revived and stand undisturbed.

9. This writ petition is dismissed granting liberty as aforesaid. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Asst.Registrar (CS VI)

/true copy/
Sub Asst. Registrar

vs/sl

To

The Deputy Commissioner of Income Tax,
Office of the Deputy Commissioner of Income Tax,
Circle-II, Tirupur.

+1 cc to Mr.R.Senniappan Advocate sr9356

+1 cc to Mr.A.P.Srinivas Advocate sr9385

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