IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.03.2020

CORAM

THE HONOURABLE MR. JUSTICE R.MAHADEVAN

W.P.No.5636 of 2009

Nirmala Chandrasekaran
5 & 7, 6th Cross Street
Besant Nagar,
Chennai - 600 090. ... Petitioner

Vs

1. Tax Recovery Officer -III
Company Range -III, Income Tax Department,
IV Floor, New Block, Room No.404,
121, Nungambakkam High Road,
Chennai - 600 034.

2. The Principal Officer,
M/s.Vesa Holdings Pvt. Ltd.
15th Main Road,
Mahalingapuram,
Chennai - 600 034.

3. The Manager,
HDFC,
Shastri Nagar, Adyar,
Chennai - 600 020.
... Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying to issue a writ of Certiorari, to call for the records in T.R.C.157-T/TRO-III/2008-09 dated 14.11.2008 on the file of the first respondent and quash the same.

For Petitioner : Mr.M.Muthukumar

For Respondents : Mrs.Hema Murali Krishnan - R1

ORDER

Challenging the order dated 14.11.2008 passed by the first respondent under Section 179 of the Income Tax Act, 1961, the petitioner has filed this writ petition.

2.In the impugned order, after having observed that the petitioner failed to prove comprehensively or in any evident manner that non-recovery of tax dues from the defaulting company M/s.Tarachanthini Services Pvt. Ltd, cannot be attributed to any gross neglect, misfeasance or breach of duty on her part as required under the provisions of Section 179, it was held by the first respondent that the petitioner is jointly and severally liable to pay the income tax dues for the assessment years 2000-01 and 2001-02, with respect to the defaulting company, in which, she is the Director.

3.Upon notice, the first respondent filed a detailed counter affidavit, wherein, it is inter alia stated that the assessments for the years 2000-01 and 2001-02 were made way back on 29.01.2004 and 29.12.2006 and the company was declared defunct only on 10.05.2007; there is no bar in making assessments even after the company having been declared defunct by the Registrar of Companies; the company is liable for the past acts of omissions and commissions; and therefore, the order passed under Section 179 is valid in law.

4.Today, when the matter was taken up for consideration, the learned counsel for the petitioner drew the attention of this Court to the additional affidavit filed by the petitioner on 06.03.2020, wherein, at paragraphs 7, 8 and 9, it is stated as follows:

> "7.I state and submit that the assessment of the company M/s.Tarachantini Services Private Ltd in respect of A.Y. 2000-01 was completed and the earlier assessment order passed u/s 143(3) r.w.s.147 passed on 31st December 2007 was annulled. The Assessing Officer of the company vide order dated 18.03.2013 has arrived at total refund due to M/s.Tarachantini Services Private Ltd to the tune of Rs.29,83,202/- details of which are as follows:

No.	Particulars	Rs.
1.	Payment of taxes on various dates	26,00,000
2.	Refund pertaining to Nirmala Chandrasekharan adjusted on 27.03.2009	36,12,255
3.	Total amount refundable	62,12,255
4.	LESS: Refund issued on 24.11.2011 as per order u/s 250	41,60,906
5.	NET: Refund due to the Assessee	20,51,349
6.	ADD: Interest u/s. 244A	9,31,853
7.	Total refund due to be issued to the assessee	29,83,202

> 8.I state and submit that with respect to A.Y.2001-02, income tax dues of M/s.Tarachantini Services Private Ltd was Rs.5,81,669/-, is still under challenge before the CIT(A).
>
> 9.I state and submit that though the order dated 27.03.2013 for A.Y.2000-01 states refund already issued of Rs.41,60,906/- and refund to be issued is for Rs.29,83,202/-, no amount had ever been refunded. The Department seeks to adjust the balance refund dues against the revised liability of M/s.Tarachantini Services Private Ltd for A.Y.2001-02 notwithstanding the stay by this Hon'ble Court."

Hence, the learned counsel submitted that it would suffice, if the petitioner is permitted to make a representation seeking refund of Rs.29,83,202/- due to M/s.Tarachantini Service Private Ltd, as per the order dated 27.03.2013 passed by the Assessing Officer, for the assessment year 2000-01.

5.The learned Standing Counsel appearing for the first respondent has no serious objection for granting such relief to the petitioner.

6.Considering the facts and circumstances of the case and having regard to the submission now made by the learned counsel for the petitioner, which has not been seriously opposed on the side of the first respondent, this Court permits the petitioner to make a representation along with required documents, seeking refund due to the company in question, before the authority concerned within a period of two weeks from the date of receipt of a copy of this order. On receipt of the said representation, the authority concerned shall consider the same and pass appropriate orders, on merits and in accordance with law, after affording due opportunity of personal hearing to the petitioner, within a period of two weeks thereafter.

7.Accordingly, the writ petition stands disposed of. No costs.

-s/d-
Assistant Registrar

True Copy
Sub-Assistant Registrar

arr/rk

To:

Tax Recovery Officer -III
Company Range -III, Income Tax Department,
IV Floor, New Block, Room No.404,
121, Nungambakkam High Road, Chennai – 600 034.

+1 cc to M/s.N.Muthukumar Advocate sr23398
+1 cc to M/s.Hemamuralikrishnnan Advocate sr23281

W.P.No.5636 of 2009

aa08/07/2020