IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.01.2020

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THE HONOURABLE DR. JUSTICE ANITA SUMANTH

Writ Petition No.906 of 2018
WMP.No.1089 of 2018

M/s.C.R.N. Investment Private Limited
A Private Limited Company,
Represented by it Managing Director
Ms.Surekha Raghavendran ...Petitioner

Vs.

1.The Chief Commissioner of Income Tax-1
Aayakar Bhavan, Main Building
1st Floor, 121, Mahatma Gandhi Salai
Nungambakkam,
Chennai-600 034.

2.The Deputy Commissioner of Income Tax
Corporate Circle 1 (2)
Aayakar Bhavan, Main Building
1st Floor, 121, Mahatma Gandhi Salai
Nungambakkam,
Chennai-600 034 ...Respondent

PRAYER: PETITION filed under Article 226 of the Constitution of India praying for the issuance of Writ of Certiorarified Mandamus, calling for the impugned proceedings of the respondent in F.No. Compounding/2015-16 dated 03.03.2016 in the case of the petitioner company and quash the same and consequently direct the respondent to permit the compounding applications for the AY 1995-1996 after providing a reasonable opportunity.

For Petitioner : Mr.P. Ramesh Kumar

For Respondent : Mrs.Hema Muralikrishnan
Senior Standing Counsel

O R D E R

The petitioner challenges order dated 03.03.2016, passed in terms of Section 279(2) of the Income Tax Act, 1961 (in short 'Act'), rejecting the application for compounding filed by the petitioner seeking compounding of offence in respect of assessment year (AY) 1995-96.

2. The petitioner had originally filed returns of income claiming depreciation in respect of steel rollers leased to Bellary Steels and Alloys Ltd., (Bellary Steels). A survey was carried out in terms of Section 133A of the Act in the premises of Bellary Steels, where it was found that the entire transaction was a sham and the petitioner/manufacturer had not supplied steel rollers to Bellary Steels at all. Bills were raised merely to facilitate funding from credit institutions. The lessee had not even produced the original delivery challans. The transaction was tripartite, involving the manufacturer/supplier, the lessor/the petitioner and the lessee/Bellary Steels. Pursuant to the survey, the petitioner revised its return of income withdrawing the claim for depreciation and remitting the entire tax payable on the transaction in question.

3. While completing the assessment, proceedings for the levy of penalty under Section 271(1)(c) were initiated for concealment of income and furnishing of inaccurate particulars of income.

4. The petitioner contended that it was not aware of the forged documents and had proceeded on the basis that the transaction was a genuine one. This stand was rejected by the Commissioner of Income Tax (Appeals), who by order dated 17.03.2004 held that there were no dispute on the position that the transaction was bogus. The petitioner had clearly committed a fraud that had serious financial consequences. The Officer also noted that incidentally, no action had been taken by the petitioner against Bellary Steels to support its statement that it was inadvertently drawn into a sham transaction.

5. The penalty levied was carried further in appeal before the Income Tax Appellate Tribunal and all findings of fact by the first appellate authority stood confirmed. Specifically, the facts noted were (i) the assessee claimed to have inspected the premises of Bellary Steels for inspection of the machineries but

the fact was that there was no machinery supplied by the manufacture (ii) that this amounted to a substantial fraud upon the Department since the false claim for depreciation on non-existing assets was made consciously.

6. These concurrent findings of fact by the lower authorities was confirmed further by a Division Bench of this Court in Tax Case (Appeal) No.124 of 2007 by order dated 20.02.2007 dismissing the petitioners' appeal. This order has attained finality.

7. The petitioner had in the meantime sought compounding of the offence that was rejected on the ground that the case of the petitioner fell within the parameters of an 'Offences involving major fraud or scam or misappropriation' or .... 'Offences committed by an assessee, who has enabled others in large scale concealment of income in a systematic and planned way over a number of years like hawala entries, bogus trusts, bogus remittance etc.'.

8. The above portion in italics constitute the guidelines of the Central Board of Direct Taxes in F.No.285/90/2008IT (Inv.)/12 dated 16th May 2008 that have been relied upon by the Chief Commissioner of Income Tax in rejecting the request for compounding.

9. Before me the petitioner hardly has any defence to offer except to refer to its letter dated 26.03.2014 seeking a clarification from the respondent in respect of anticipated prosecution proceedings for the AY 1996-97. I do not find any relevance to this reference by the petitioner.

10. In the light of the categoric findings of fact by the authorities at all levels, there absolutely no merit in this writ petition and the same is dismissed. Connected miscellaneous petitions are closed. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

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  Nungambakkam,
  Chennai-600 034

+1 cc to Mr.P.Ramesh Kumar, Advocate, S.R.No.5248, 5281

+1 cc to Mr.Hema Muralikrishnan, Advocate, S.R.No.5248

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VG(CO)

RN(21/05/2020)