IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 04.03.2020

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THE HON'BLE MR.JUSTICE R.MAHADEVAN

W.P.No.37642 of 2016
and
W.M.P.Nos.32267 & 32268 of 2016

Manishkumar B Jain ... Petitioner

Vs.

1.Income Tax Officer
Non Corporate Ward 5(3)
Kannammai Building
611, Anna Salai
Chennai 600 006

2.The Commissioner of Income Tax (Appeals) 5
121, Mahatma Gandhi Road
Nungambakkam, Chennai 600 034

3.The Tax Recovery Officer 9
Kannammai Building III Floor
611, Anna Salai, Chennai 600 006 ... Respondents

Prayer: Petition filed under Article 226 of The Constitution of India praying to call for the records on the file of the Second Respondent and quash the impugned notice for enhancement in ITA No.24/CIT (A)-5/ 2015- 16 dated 21.09.2016 issued by the Second respondent and direct him to make independent inquiry on the assessability of any income covered by order in original passed by the customs authorities under the customs act and thereafter issue notice of enhancement if he considers necessary.

For Petitioner : Mr.N.V.Balaji

For Respondents : Mr.D.Prabhu Mukund Arunkumar

ORDER

Challenging the notice dated 21.09.2016 issued by the 2nd respondent, the petitioner has come up with the present writ petition. In the impugned notice, it is stated that the Assessing Officer determined the unexplained cash purchase at Rs.1,14,97,899/- based on the information received from the Customs Authorities and hence, the petitioner was called upon to explain as to why the total values determined should not be adopted in place of Rs.1,14,97,899/- as determined by the Assessing Officer.

2. Upon notice, the 2nd respondent filed a detailed counter affidavit inter alia stating that on 21.09.2016, notice was issued for enhancement of income and served on the AR asking the assessee to give his explanation within 15 days, however, till date the assessee neither submitted the explanation nor requested for more time to submit the explanation and in order to give sufficient opportunity to the assessee to file with supporting documents, the appeal has not been disposed of; and if the Assessee furnishes the details of purchases, from whom the purchases were made along with the item purchased, then independent enquiry would be possible to go into the genuineness of the unaccounted purchase. Stating so, the second respondent sought to dismiss this writ petition.

3.The main contention of the learned counsel for the petitioner is that the second respondent, without applying his mind independently, has issued the impugned notice relying on the report of the Assessment Officer, which is arbitrary and illegal and on this score alone, the impugned notice is liable to be quashed. In support of his submission, learned counsel relied upon the decision of this Court in Commissioner of Income-tax, Trichy v. Amman Steel & Allied Industries [(2017) 79 taxmann.com 331 (Madras) : (2015) 377 ITR 568 (Madras)], wherein, at para 15, it is held as follows:

> "This Court has already held in the former portion of the order, that the assessment order came to be passed only on the basis of the show cause notice issued by the Central Excise Department and no independent enquiry has been conducted by the Assessing Officer. Further, the ratio of the decision of the Supreme Court in K.T.M.S. Mohammed v. Union of India [1992] 197 ITR 196/65 Taxman 130, clearly applies to the facts of the present case. Such being the case, in the absence of any independent enquiry by the Assessing Officer, the disallowance sought to be made under the Income Tax Act, by the Assessing Officer, on

the basis of the show cause notice, issued under the Central Excise Act cannot be sustained. When the assessable income was arrived at by applying a percentage rate, as held by this Court in CIT Vs. S.Mohammad Dhurabudeen [Tax case (Appeal) No.885 of 2007, dated 11.07.2007], the said exercise would take care of everything and there is no need for the Assessing Officer to make scrutiny of the amount incurred on the purchases by the assessee for the purpose of disallowance. Therefore, this Court is of the considered view that the order of the Tribunal in concurring with the CIT (Appeals) on this issue is justified and this Court finds no reason to differ with the same."

4.On the other hand, the learned counsel for the respondent fairly submitted that if the petitioner files necessary objection, the 2nd respondent would consider the same and pass orders independently, on merits and in accordance with law.

5.Upon agreeing the aforesaid submission made by the learned counsel for the respondent, the learned counsel for the petitioner submitted that the petitioner may be permitted to file their objections afresh before the 2nd respondent, within a time frame to be stipulated by this Court.

6.Considering the facts and circumstances of the case and having regard to the submissions now made by the learned counsel on either side, this Court permits the petitioner to submit the necessary objections to the second respondent, within a period of two weeks from the date of receipt of a copy of this order. On receipt of the same, the 2nd respondent shall consider the same and pass appropriate orders independently applying his mind, on merits and in accordance with law, after providing an opportunity of personal hearing to the petitioner, within a period of four weeks thereafter.

7.This writ petition stands disposed of accordingly. Consequently, the connected miscellaneous petitions are closed. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

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+1cc to M/s.M.V.Balaji, Advocate SR.19793
+1cc to Mrs.Hema Muralikrishnan, Advocate SR.19194

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RSI(CO)
CB(26/05/2020)