IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.02.2020

CORAM :

THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN

AND

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

W.A.No.3912 of 2019 and
C.M.P.Nos.25197 & 25199 of 2019

Kamala Muthiah
as the erstwhile Director of
M/s.M.Ct.M.Corporation Pvt. Ltd.,
(Now dissolved)
761, Anna Salai,
Chennai - 600 002. ... Appellant /Petitioner

Vs.

The Assistant Commissioner of Income Tax,
Company Circle IV (1),
121, Nungambakkam High Road,
Chennai - 600 034. ... Respondent

Prayer: Writ Appeal filed under Clause 15 of the Letters Patent to set aside the order dated 26.07.2019 passed in W.P.No.26276 of 2007 and allow this Writ Appeal.

WP.No.26276 of 2007:Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari calling for the records in P.A.N.Ma.8 dated 28.03.2007 read with MC-8/2000-01 dated 18.07.2007 of the respondent quash the same.

For Appellant : Mr.M.P.Senthil Kumar
For Respondent : Mrs.Hema Muralikrishnan,
Standing Counsel

JUDGMENT

[made by P.VELMURUGAN, J.]

This writ appeal has been directed by the assessee against the order dated 26.07.2019 passed in W.P.No.26276 of 2007.

2 The respondent had issued a notice dated 28.03.2007 under Section 148 of the Income Tax Act, reopening the assessment of M/s.M.Ct.M. Corporation Private Limited for A.Y.2000-2001. In response to the same, the appellant had sent a reply dated 05.04.2007 stating that for A.Y.2000-2001, the Company was not in existence, for which, the respondent had sent communication on 16.05.2007 providing reasons for reopening of assessment for the Assessment Year 2000-2001. On receiving the above communications, the appellant on 31.05.2007 sent his objections for reopening by the Assessing Officer. The Assessing Officer had sent a letter on 18.07.2007 rejecting the objections raised by the appellant/assessee. The appellant, challenging the notice issued under Section 148 of the Income Tax Act and also the rejection order of the Assessing Officer dated 18.07.2007, had filed the writ petition in W.P.No.26276 of 2007. The learned single Judge, after considering the submissions made on both the parties, passed the order dated 26.07.2019, wherein, liberty was given to the appellant to raise further objections before the Assessing Officer to the notice dated 28.03.2007 issued under Section 148 of the Income Tax Act and on receipt of such objections, the Assessing Officer was directed to deal with it in accordance with law, and after giving due opportunity to the appellant, final decision has to be taken. Challenging the above order passed by the Writ Court dated 26.07.2019, the assessee has filed this writ appeal.

3 The learned counsel appearing for the appellant would submit that the appellant's Company i.e. M/s.M.Ct.M. Corporation Pvt. Ltd., for which the Assessing Officer sought to reopen the assessment for Assessment Year 2000-2001 was demerged into M.Ct.M. Global Investment Privatae Limited and Sivagami Holdings Private Limited by sanction of this Court in Company Petition w.e.f. 01.04.1999 vide order dated 10.12.1999 in C.P.Nos.105 to 107 of 1999. The said fact was also communicated to the Assessing Officer by letter dated 29.11.2000 stating that M.Ct.M. Corporation Private Limited had not filed Income Tax for Assessment Year 2000-2001 providing details of demerged company and their respective Assessing Officer. The learned counsel would further submit that in response to the notice issued under

Section 148 of the Income Tax Act, the appellant on 05.04.2007 sent a reply reiterating the non-existence of the Company and enclosed the copy of the order of this Court dated 10.12.1999. Despite the same, the Assessing Officer without considering the said fact and the objections raised by the appellant, had passed the rejection order. The learned counsel has placed his reliance on the decisions reported in (2019) 416 ITR 613 (SC) and also (1961) 41 ITR 191 (SC), (2017) 390 ITR 10 (SC), (2003) 264 ITR 566 (SC), (1968) 67 ITR 11 (SC), (2000) 241 ITR 0672 (Mad), (2004) 267 ITR 200 (Bom) and (2018) 404 ITR 10 (SC). The learned Single Judge had also not appreciated the facts brought to the knowledge of the Writ Court and instead of setting aside the orders of the Assessing Officer impugned in the writ petition, passed the order dated 26.07.2019 issuing direction to the Assessing Officer to consider the objections to be raised by the appellant, which would not at all suffice to give an end to the matter on hand.

4 The learned counsel appearing for the respondent contended that the respondent/Assessing Officer issued the notice, which is under challenge, is only based on the notes of accounts on the Balance Sheet as on 31.03.2000. Even though, the appellant had informed the respondent about the sanction of Scheme of Arrangement for demerger, subsequently there was no communication, whether it was finally confirmed or not. Only after receiving notice under Section 148 on 28.03.2007, the appellant had sent letter on 05.04.2007 enclosing the confirmation order of this Court dated 27.06.2006. Furthermore, the notice issued under Section 148 cannot be set aside on the ground stated by the appellant. Mere dissolution of the Company would not take away the rights of the Authorities assessing the affairs of the Company. In support of his contentions, the learned counsel placed her reliance on the decision rendered by the Hon'ble Supreme Court reported in (2019) 104 taxman.com 192 (SC) (Commissioner of Income-Tax, Jaipur vs. Gopal Shri Scrips (P) Ltd., The learned Single Judge rightly remanded the matter back to the Assessing Officer to consider the objections to be raised by the appellant and pass orders on merit. There is no reason to interfere with the orders of the learned Single Judge, which is well founded.

5 We have heard the rival submissions made on either side and perused the materials placed on record.

6 Admittedly the appellant's erstwhile company viz. M/s.M.Ct.M. Corporation Pvt. Ltd., was demerged into M/s.M.Ct.M.Global Investment Private Limited and Sivagami Holdings Private Limited without winding up w.e.f. 01.04.1999

vide order of this Court dated 10.12.1999 in C.P.Nos.105 to 107 of 1999. Even though, the appellant informed the respondent about the sanction of Scheme of Arrangement for demerger, it is seen that subsequently there was no communication to the respondent, whether it is finally confirmed or not. Based on the notes on accounts of the Balance Sheet as on 31.03.2000, the respondent found it necessary to reopen the assessment of M/s.M.Ct.M.Corporation Pvt. Ltd., for A.Y.2000-2001 and hence issued notice under Section 148 of the Income Tax Act. The appellant sent letter on 05.04.2007 enclosing the confirmation order of this Court dated 27.06.2006, only after receiving notice under Section 148 issued on 28.03.2007 and subsequently raised objections and the respondent rejected the same.

7 On a perusal of the order passed in the writ petition, which is impugned in this writ appeal, it is clear that the learned Single Judge has not gone into the matter on merit and held as follows:

> "9. In the light of the above observations, the petitioner is granted liberty to raise further objections before the Assessing Officer to the Notice dated 28.03.2007, issued under Section 148 of the Income Tax Act, within a period of 15 days from the date of receipt of copy of this order. On receipt of such objections, the Assessing Officer shall deal with it, in accordance with law, after giving a due opportunity of personal hearing to the petitioner and take a final decision, atleast within a period of 12 weeks therefrom."

8 The factual aspects of the affairs of the dissolved Company have to be gone into by the Assessing Officer and hence the learned Single Judge rightly remanded the matter back to the Assessing Officer and issued directions as stated supra. Further as per the decision rendered by the Hon'ble Supreme Court, which is referred to by the learned counsel for the respondent, it is clear that Section 506(5) proviso (a) of the Companies Act and Chapter XV of the Income Tax Act which deals with "liability in special cases" and its clause (L) which deals with "discontinuance of business or dissolution" and these provisions provide as to how and in what manner the liability against such Company arising under the Companies Act and under the Income Tax Act is required to be dealt with and the Hon'ble Supreme Court remanded the matter back to the High Court to decide the matter afresh.

9 Mere winding up or dissolution of the Company would not take away its liability, which is a matter to be gone into by the Assessing Officer. The decisions referred to by the learned counsel appearing for the appellant are not helpful to his case, since the Hon'ble Supreme Court in latest decision stated supra reported in (2019) 104 taxman 192 (SC) has clearly held as stated supra and the relevant provisions of the Companies Act and the Income Tax Act have to be dealt with.

10 Therefore, in our considered view, there is no reason to interfere with the order of the learned Single Judge, since the learned Judge has not gone into the matter on merits and only given liberty to the appellant to raise additional objections and the respondent was also

directed to consider the same in accordance with law after extending due opportunity to the appellant and no prejudice would be caused to either parties.

11 In view of the foregoing reasons, the writ appeal stands dismissed as devoid of merit and substance. Consequently connected miscellaneous petitions are closed.

Sd/-
Asst.Registrar (CS VIII)

/true copy/

Sub Asst. Registrar

cgi
To

The Assistant Commissioner of Income Tax,
Company Circle IV (1),
121, Nungambakkam High Road,
Chennai - 600 034

+1 cc to M/s.Hema Muralikrishnan Advocate sr7920
+1 cc to Mr.G.Baskar Advocate sr7863

W.A.No.3912 of 2019 and
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aa27/02/2020