.IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.09.2020

CORAM

THE HONOURABLE MR. JUSTICE M.S. RAMESH

W.P.No.33790 of 2018
and W.M.P.Nos.39236, 39240 & 39243 of 2018

Suvendra Kumar Panda ..Petitioner

-Vs-

The Income Tax Officer,
Corporate Ward 6(2),
Room No.707, Wanaparthy Block,
7th Floor, 121 MG Road,
Nungambakkam,
Chennai-600 034. ..Respondent

PRAYER: Writ Petition filed under Article 226 of Constitution of India, praying to issue a Writ of Certiorarified Mandamus, calling for the records of the respondent contained in its notice No.CHE/CORPWARD-6(2)/2018-19 DATED 13.11.2018, for assessment year 2011-12 and all proceedings in furtherance thereof, including but not limited to the order under Section 2 (35)(b) of the Income Tax Act, 1961, for PAN; AAICS5971M, dated 26.11.2018, passed by the respondent treating the petitioner as the Principal Officer of M/s.Shiva Perumal Technologies Pvt. Ltd., and to quash the same as arbitrary, illegal and without jurisdiction and to consequently, forbear the respondent from in any manner treating the petitioner as the Principal Officer of M/s.Shiva Perumal Technologies Pvt. Ltd.

For Petitioner : Mr.Arun Karthik Mohan
for Mr.Suhrith Parthasarathy

For Respondent : Mr.A.P.Srinivas, Standing counsel

O R D E R

With the consent of both parties, the Writ Petition is taken up today and heard through video conferencing.

2. To the notice dated 13.11.2018, proposing to treat the petitioner herein as a Principal Officer as defined under Section 2(35)(b) of the Income Tax Act, 1961, the petitioner herein, who had acted as a Director of the Company for a short period between 01.04.2010 and 14.10.2010, gave a reply on

14.11.2018 disclosing that he was no more the Director of the Company and also enclosing the master data of the Company in which he had served as a Director, which also discloses the details of the acting Directors.

3. The learned counsel for the petitioner placed reliance on the decision of the Hon'ble Division Bench of the Andhra Pradesh High Court reported in 1977 (106) ITR 119 in the case of Income Tax Officer, A-Ward, Nellore Circle, Nellore V. Official Liquidator and submitted that the purpose of treating a person connected with the management or administration of the Company as a Principal Officer is only to protect the interests of the revenue by compelling the person who is in a position to prepare and submit a return on behalf of the Company. Such being the intention of the Parliament, the present impugned order dated 26.11.2018, treating the petitioner, who is a retired Director, as a Principal Officer is unwarranted.

4. I do not intend to lay down any proposition with regard to the right of the department to treat a retired Director of a Company as a Principal Officer. Nevertheless, this Court is of the view that when there were acting Directors of the Company, who are said to be still continuing as the Directors of the Company, the department could have proceeded against any one of such acting Directors for the reassessment proceedings and could have treated any one of them as the Principal Officer. The petitioner claims that he is in possession of the details of the acting Directors during the relevant Assessment Year. If such details are directed to be furnished to the respondent department and thereafter a decision could be taken, it would be more appropriate and convenient for the further assessment proceedings. I am inclined to take this view since effective proceedings may not be possible with the petitioner as the Principal Officer, who had acted for a very short period as a Director and had retired thereafter.

5. In this background, the impugned order dated 26.11.2018, treating the petitioner namely, Suvendra Kumar Panda as a Principal Officer is set aside. Consequently, the petitioner is directed to furnish the details of the acting Directors of the Company during the Financial Year 2011-2012 to the respondent herein, by way of a reply to the respondent's proposal dated 13.11.2018, atleast within a period of 15 days from the date of receipt of a copy of this order. The respondent is at liberty to proceed against any one of the acting Directors for treating them as a Principal Officer, as contemplated under Section 2(35)(b) of the Income Tax Act,1961.

6. With the above directions, the Writ Petition stands disposed of. Consequently, connected Miscellaneous Petitions are closed. No costs.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

DP
To

The Income Tax Officer,
Corporate Ward 6(2),
Room No.707, Wanaparthy Block,
7th Floor, 121 MG Road,
Nungambakkam,
Chennai-600 034.

+1 CC to Mr. Arun Karthik Mohan, Advocate sr 30573.
+1 CC to Mr.A.P.Srinivas, Advocate sr 30223.

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VGI(CO)
SP(19/10/2020)