BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 30.07.2020

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P.(MD).No.6100 of 2020
and
W.M.P.(MD).Nos.5288 & 5289 of 2020

Kajah Enterprises Private Limited,
Represented by its Director Abdul Gafoor,
S/o. Mr.KhanMohamed ... Petitioner

Vs.

The Assistant Commissioner of Income Tax,
TDS Circle, Madurai,
Income Tax Staff Quarters Complex,
Kulamangalam Main Road,
Meenambalapuram,
Madurai-625 002. ... Respondent

PRAYER: Writ petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari, calling for the records pursuant to the impugned order of the respondent in MRIKOO437D/ACIT/TDS CIRCLE/MDU.2019-20 dated 19.02.2020 relating to A.Y.2020-21 (Q1, Q2 & Q3) and quash the same.

For Petitioner : Mr.Lakshmi Gopinathan
for M/s.Polax Legal Solutions
For Respondent : Mrs.S.Srimathy
Standing Counsel

ORDER

Heard the learned counsel appearing for the writ petitioner and the learned Standing Counsel appearing for the respondent.

2.The petitioner is a registered Company. The petitioner has made certain payments to its Directors. The respondent has passed the impugned order dated 19.02.2020 treating the petitioner as an assessee indefault and directing the petitioner to deduct TDS at 30% on the amount paid to the Directors and remit the same. The demand has been also quantified. The said order is questioned in this Writ Petition primarily on the ground that the notice that preceded the demand did not contain any such proposal. The petitioner had enclosed a copy of the notice dated 12.12.2019 issued by the respondent at page no.2. The said notice only reads that the TDS survey was conducted at the business premises of the petitioner on 11.12.2019 and that the petitioner was directed to submit the details of TDS deduction made, the TDS remitted to the Government and E-TDS statement filed for the financial year 2019-2020. It does not contain any allegations that there was a shortfall in the matter of TDS deduction. As rightly contended by the learned counsel appearing for the petitioner that when the proposal or show cause notice is silent on a certain aspect, the final order passed by the Authority cannot be on the same. In other words, the petitioner cannot be taken by surprise. Therefore, I am inclined to quash the impugned order on that sole ground.

3.The petitioner's counsel would further contend that Section 201 of the Income Tax Act, 1961, would also come to rescue of the petitioner. It is their specific case that the recipients namely, the Directors in this case had shown the amounts received in their returns and that they have also paid the advance tax for the same. If only the petitioner is given one more opportunity, the petitioner shall place all these materials to the fullest satisfaction of the respondent. No exception can be taken to this request. In this view of the matter, the order impugned in this Writ Petition stands quashed and the matter is remitted to the file of the respondent to pass orders afresh in accordance with law after putting the petitioner on notice. In other words, the petitioner will be given a fresh opportunity of hearing, in which, he shall place all the materials to show that he cannot be treated as an asssesse indefault.

4.The Writ Petition is allowed on these terms. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

The Assistant Commissioner of Income Tax,
TDS Circle, Madurai,
Income Tax Staff Quarters Complex,
Kulamangalam Main Road,
Meenambalapuram,
Madurai-625 002.

ORDER MADE IN
W.P.(MD).No.6100 of 2020
30.07.2020

tsg
SDS (06.08.2020) 3P-2C