IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.07.2021

CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

W.P.No.28817 of 2010
and
M.P.No.2 of 2010

S.Aftab Ahamed ..Petitioner

Vs.

1.Income Tax Officer,
Ward XV(1),
Aaykar Bhavan,
121, MG Road,
Chennai 34.

2.Commissioner of Income Tax,
Chennai – X,
Aaykar Bhavan,
121, MG Road, Chennai – 34. ..Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records of the 2nd respondent in his proceedings C.No.10114/2/CIT-X/2009-10 dated 31.03.2010 and the order of the First Respondent dated 18.09.2008 and quash the same and direct the 1st respondent to pass fresh order under Section 143(3) of the Income Tax Act, 1961.

For Petitioner : Mr.S.Sathiyanarayanan

For Respondents : Mr.D.Prabhu Mukunth Arunkumar (Standing Counsel for Income Tax)

ORDER

The order passed by the 2nd respondent under Section 264 of the Income Tax Act, 1961 (hereinafter referred to as, 'the Act') in proceedings dated 31.03.2010, is under challenge in the present Writ Petition.

2.The petitioner has assessed to Income Tax for about 20 years and in respect of the present Writ Petition, the petitioner states that he filed his Return of Income for the

Assessment Year 2006-07. Section 143(1) Intimation was processed on 06.09.2007 and the Return of Income was accepted by issuing a nil demand.

3.The Assessing Officer passed an assessment order on 18.09.2008, stating that construction of two flats bearing Door Nos.23C/4D and 23C/4B at Dr. B. N. Salai (North Boag Road), T.Nagar, Chennai was completed only in the Financial Year 1997-98, which is factually not correct. The petitioner states that the physical possession of the Flats was handed over to the assessee in the year 1995 itself. The learned counsel for the petitioner reiterated that in the Return of Income filed for the Assessment Year 1996-97, the petitioner has categorically stated regarding the monthly rents collected from the said Flats. The said informations would reveal that the constructions had been completed in the year 1995 itself. While so, based on the incorrect factual details, the 2nd respondent passed the impugned order under Section 264 of the Act.

4.The learned Standing Counsel appearing on behalf of the respondents disputed the said contentions by stating that the petitioner/assessee had not submitted any document to establish that construction of the Flats completed in all respects, in the year 1995. The facts and the admissions made by the petitioner would reveal that the construction of Flats was completed in the year 1997. The agreement itself was signed on 03.02.1996. Therefore, it may not be possible to state that the construction of the Flats was completed and the petitioner occupied the said Flats on 10.11.1995. The petitioner submitted his Revision Petition before the 2nd respondent under Section 264 of the Act. The petitioner himself has stated that he has no documents to establish the same. However, the learned counsel for the petitioner opposed the same by stating that the petitioner is possessing document to establish that the construction was over during the year 1995.

5.Such disputed facts between the parties regarding the completion of construction of Flats cannot be adjudicated in a Writ Petition, with reference to the documents and evidences. When there is a contradiction with reference to the facts, the matter is to be remanded back for enquiry and decide the issues based on the documents. In the present case, the petitioner states that the construction of Flats was completed in all respects and he had taken possession in the year 1995 and he collected rent and the said facts are available in the Return of Income for the Assessment Year 1996-97. Per contra, the respondents state that the agreement for sale itself was of the year 1996 and therefore, there is no possibility to say that the construction was completed in the year 1995. In view of the contradictory statement, this Court thought fit to remand the matter back for fresh consideration, which is to be done with reference to the documents and evidences which all are to be produced by the petitioner to establish their case. Accordingly, the impugned order passed by the 2nd respondent in proceedings C.No.10114/2/CIT-X/2009-10 dated 31.03.2010 is quashed and the matter is remanded back to the 2nd respondent for a fresh consideration. The petitioner is at liberty to submit his documents, evidences and defence statement, if any, within a period of four weeks from the date of receipt of a copy of this order and on receipt of any such objections or defence statements, the 2nd respondent is directed to provide opportunity to the writ petitioner to defend their case and pass orders, on merits and in accordance with law, as expeditiously as possible, preferably within a period of three months thereafter.

6.With these directions, the Writ Petition stands allowed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

gsa

To

1.Income Tax Officer,
Ward XV(1),
Aaykar Bhavan,
121, MG Road,
Chennai 34.

2.Commissioner of Income Tax,
Chennai – X,
Aaykar Bhavan,
121, MG Road, Chennai – 34.

+1cc to Mr.Hema Murali Krishnan, Advocate, S.R.No.31865

W.P.No.28817 of 2010

BS(CO)
SB(03/08/2021)