IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.08.2021

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THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.24167 of 2012
and
M.P.No.1 of 2012
and
M.P.No.1 of 2014

ORCHID PHARMA LIMITED,
Represented by its Managing Director,
Mr.Manish Dhanuka,
"ORCHID TOWERS",
No.313, Valluvarkottam High Road,
Nungambakkam, Chennai – 600 034.
(Cause title amended vide court order
dated 03.08.2021 made in W.M.P.No.15934/2021
in W.P.No.24167/2012) ...Petitioner

Vs

1. The Income Tax Settlement Commission,
   Additional Bench,
   640, Anna Salai,
   Chennai – 600 035.

2. Commissioner of Income Tax – III,
   121, Nungambakkam High Road,
   Nungambakkam,
   Chennai – 600 034.

3. Assistant Commissioner of Income Tax,
   Company Circle – V (1)
   121, Nungambakkam High Road,
   Nungambakkam,
   Chennai - 600 034. ...Respondents

PRAYER : Writ Petition filed Under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records in relation to the notice in F.No.TN/CN 3/2010-11/4/IT dated 27.08.2012 and miscellaneous petition dated 06.08.2012 filed by the 2nd respondent in Settlement Application No.TN/CN 3/2010-11/4/IT, Assessment Years 2006-07 to 2010-11 pending before the 1st respondent herein and quash the same and consequently directing the respondents to forego and refrain from levying any penalty under the Income Tax Act, 1961, for concealment of income on the petitioner company.

For Petitioner : Mr.N.V.Balaji

For Respondent : R1 - Settlement Commission
R2 and R3-M/s.Hema Murali Krishnan
Senior Standing counsel
[For Income Tax]

O R D E R

The Notice of hearing issued by the respondent in proceedings dated 27.08.2012 is under challenge in the present writ petition.

2. The notice impugned states that the petitioner / assessee may appear before the Settlement Commission either in person or through representative duly authorized in this behalf for the purpose of making submissions. Instead of availing the opportunity of hearing provided, the petitioner has chosen to file the present writ petition.

3. No writ against a notice is entertainable in a routine manner. A writ against a notice is entertainable only if such notice is issued by an incompetent authority having no jurisdiction and directly in violation of the provisions of the Income Tax Act or an allegation of malafides are raised. Even in case of raising an allegation of malafides, the authority against whom such an allegation is raised, must be impleaded as a party respondent in the writ proceedings in his personal capacity. Thus, in all circumstances, the petitioner / assessee has to respond to such notice for the purpose of defending his case in the manner known to law.

4. The petitioner raised several grounds on merits. However, those merits and disputed facts are to be adjudicated elaborately with reference to the original documents and evidences to be produced before the competent authorities. High Court cannot resolve the factual disputes in a writ proceedings under Article 226 of the Constitution of India. This apart, during the pendency of the writ petition, several developments took place and the parties have approached various Forums and several orders are also passed including by the NCLT. These factors are to be taken into consideration for the purpose of further adjudication by the competent authority.

5. This being the factum established, the petitioner is at liberty to submit their objections / defense and participate in the process of hearing and the respondents are directed to

conduct an enquiry and dispose of the matter as expeditiously as possible on merits and in accordance with law by affording opportunity to the writ petitioner and by following the procedures as contemplated.

6. With these directions, the writ petition stands disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS-VI)

//True Copy//

Sub Assistant Registrar

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To

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W.P.No.24167 of 2012

PCH(CO)
RGA(16/09/2021)