IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.02.2021

CORAM:

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.No.19994 of 2018
and
W.M.P.No.23400 of 2018

M/s. Texcity Software Park Limited,
Rep by its Director Mr.A.P.Ramachandran
14,Manchester Square,
Puliakulam Road,
Coimbatore - 641 037. ... Petitioner

Vs.

1.The Principal Commissioner of Income Tax-1,
No.63, Race Course Road,
Coimbatore - 641 018.

2.The Deputy Commissioner of Income Tax,
Corporate Circle - I,
Coimbatore - 641 018. ... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India praying for the issuance of Writ of Certiorari, to call for the records relating to the Order passed by the 1st Respondent in C.No.121(4)/PCIT-1/CBE/2016-17 dated 22.03.2018 and quash the same.

For Petitioner : Mr.Niranjan Rajagopalan
For Respondents : Mr.A.P.Srinivas
Senior Standing Counsel

O R D E R

Heard the learned counsel for the petitioner and respondent. The present writ petition has been filed by the petitioner against the impugned order dated 22.3.2018 passed by the first respondent Principal Commissioner Of Income Tax under section 264 of the Income Tax Act, 1961.

2. By the impugned order, application filed by the petitioner before the first respondent under section 264 of the Income Tax Act, 1961 against the assessment order dated 31.12.2015 for the assessment year 2013-14 was dismissed.

3. By the impugned order, the respondent has refused the revised Assessment dated 31.12.2015 for the Assessment year 2013-14 passed by the second respondent on the ground that if the petitioner was aggrieved by the Assessment order

dated 31.12.2015, it was open for the petitioner to file a statutory appeal before the Commissioner of Income Tax (Appeals) in time. On merits also the first respondent Principal Commissioner of Income Tax has accepted the contention of the Income Tax Department and rejected the contention of the petitioner.

4.The brief facts of the case are that the petitioner had paid amounts to Mrs.Thillaikarasi out of borrowed amount from Karur Vysya Bank Ltd and claimed the business expediture the interest paid thereon. In the Assessment order, dated 31.12.2015 the second respondent disallowed the same. Aggrieved with the same the petitioner filed application under section 264 of the Income Tax Act, 1961 on 31.12.2017, after a lapse of two years.

5.The facts of the case are that Mrs.Thillaikarasi had entered into Memorandum of Agreement dated 20.04.2017 with a landowner namely M/s.Rangaswamy Naidu Orchids Private Limited to purchase 33.84 acres of land in Coimbatore District. The agreement dated 20.4.2007 was for a total consideration of Rs.5,50,00,000/-. On the same date, Mrs.Thillaikarasi had signed another Memorandum of Agreement, undertaking to sell the aforesaid land petitioner for a total for consideration of Rs.10,15,20,000/-. In connection with the same, the petitioner had advanced certain amounts to Mrs.Thillaikarasi out of the borrowed amounts. The interest paid thereon was treated as a business expenditure by the petitioner.

6.Later on 18.9.2018, M/s. Rangaswamy Naidu Orchids Private Limited, Mrs.Thillaikarasi and M/s.Gestione Consulting Pvt. Ltd entered into a Tripartite memorandum of agreement whereby the rights of the petitioner under the agreement dated 20.4.2007 stood assigned in favour of M/s.Gestione Consulting Pvt. Ltd and to compensate Mrs.Thillaikarasi for the purported loss on agreement holder in the Memorandum of Agreement dated 20.4.2007, it recorded that Mrs.Thillaikarasi was entitled to receive a sum of Rs.3 crores as compensation.

7.By the Assessment order dated 31.12.2015, the second respondent disallowed an amount of Rs.70,44,000/- being the proportionate interest borne by the petitioner on the amount paid to Mrs.Thillaikarasi on the ground that the payment made to Mrs.Thillaikarasi was not connected with the business of the petitioner and therefore was not a business expenditure.

8.The petitioner having missed the opportunity to file an appeal in time before the Commissioner of Income Tax (Appeals) filed an application for revision of the assessment order dated 31.12.2015 before the first respondent under 264 of the Income Tax Act, 1961. Before the first respondent, the petitioner merely stated that the amount paid to Mrs.Thillaikarasi was incidental to the main activity of the petitioner to develop a software technology Park and therefore the interest borne on such borrowed capital paid to Mrs.Thillaikarasi was liable to be allowed as a business expenditure. I have considered the arguments advanced by the learned counsel for the petitioner.

9.From the facts narrated it is evident that the petitioner had borrowed capital from the bank and paid amounts the said Mrs.Thillaikarasi contrary to the memorandum and articles of association of the petitioner company. The amount that was paid to Mrs.Thillaikarasi was not a business expenditure. Therefore, the interest paid thereon out of the borrowed capital also cannot be allowed to be written off as business expenditure. Therefore I do not find any merits in the present writ petition. The first respondent Principal Commissioner of Income Tax has rightly rejected the Application filed under 264 of the Income Tax Act, 1961 vide the imugned order. The scope of revision under 264 of the Income Tax Act, 1961 is limited and therefore cannot be interfered.

10.Further, the scope of revision under section 264 of the Income Tax Act, 1961 cannot be abused as a substitute to get over an order of assessment passed second respondent without filing an appeal. Nothing to stopped the petitioner from filing a statutory appeal in time before the Commissioner of Income Tax (Appeals). I therefore do not find any merits in the present writ petition. The petitioner therefore liable to be dismissed. Accordingly it is dismissed. No costs. Consequently, connected miscellaneous petition is also closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To
1.The Principal Commissioner of Income Tax-1,
No.63, Race Course Road,
Coimbatore - 641 018.

2.The Deputy Commissioner of Income Tax,
Corporate Circle - I, Coimbatore - 641 018.

+1cc to Mr.G.R.Associates, Advocate, S.R.No. 5326
+1cc to Mr.A.P.Srinivas, Advocate, S.R.No. 5056

W.P.No.19994 of 2018
and W.M.P.No.23400 of 2018

AJS(CO)
GN(16/03/2021)