BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 25.03.2021

CORAM:

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P.(MD)No.6733 of 2021
and
W.M.P.(MD)Nos.5187 & 5188 of 2021

M/s.K.S.Hospital,
Represented by its Managing Partner,
Dr.S.Selvarajan,
S/o.A.Sundararajulu,
No.60, Mutt Street,
Kumbakonam-612001,
Thanjavur District.

... Petitioner

-Vs-

1.The Joint Commissioner of Income Tax,
Office of the Joint Commissioner of Income Tax,
Central Range, Madurai.

2.The Assistant Commissioner of Income Tax,
Central Circle-1, Income Tax Office,
Williams Road,
Trichy-620015.

... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, to call for the records pertaining to the impugned order passed by the second respondent vide his proceeding in PAN No.AANFK5575H Assessment Year 2019-2020 in DIN & Order No.ITBA/AST/S/143 (3)/2020-21/1031389255 (1) dated 10.03.2020 and quash the same as illegal and for other reliefs .

For Petitioner : Mr.V.Malaiyendran
For Respondents : Mr.N.Dilipkumar

ORDER

Heard the learned counsel on either side. With the consent of learned counsel on either side, the Writ Petition is taken up for final disposal at the admission stage itself.

2.The petitioner had suffered an order under Section 144 of Income Tax Act, whereby, the second respondent passed an assessment order to the best of his Judgment. The said order is assailed by the petitioner primarily on three grounds.

(a) Notice was issued on 01.03.2021 and the impugned order came to be passed on 10.03.2021. Thus, no reasonable opportunity was afforded to the petitioner.

(b) no personal hearing was granted to the petitioner.

(c)the impugned order by relying on the statements during survey has clearly violated the principles laid down by the Hon'ble Division Bench of this Court in T.C(A)No.867 of 2007, dated 04.07.2007.

3.The standing counsel pointed out that if the impugned order had relied only on the statements recorded during survey, then, the petitioner may have an argument to make. But in the case on hand, apart from the statements recorded during survey, there are other materials on which reliance has been placed by the assessing officer. He would also state that the petitioner did not ask for personal hearing. He drew my attention to the fact that the notice issued on 01.03.2021 was not the first instance. In fact, notice was issued to the petitioner much earlier ie., on 29.09.2020. The petitioner did not bother to respond even to the said notice. Since 31.03.2021 is fast approaching, the assessing authority was under compulsion to conclude the proceedings and therefore, the assessing officer cannot be blamed for passing the impugned order on 10.03.2021.

4.Considering the submissions made by the learned Standing Counsel, I am of the view that this is a case in which, the petitioner should rather avail alternative remedy of appeal. If the petitioner files an appeal before the appellate authority within a period of three weeks from the date of receipt of a copy of this order, the same will be entertained without reference to limitation. It is seen that the petitioner has already paid a sum of Rs.78,50,000/- as advance tax. Therefore, the petitioner is also entitled to apply for interim relief. Till the disposal of the interim application by the appellate authority, the petitioner will not be treated as assessee in default. I make it clear that all the contentions of the petitioner are left open.

5.This Writ Petition is disposed of accordingly. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

/ /2021

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.

+1 CC to M/s.N.DILIPKUMAR, Advocate (SR-13670[F] dated 25/03/2021)

+1 CC to M/s.V.MALAIYENDRAN, Advocate (SR-13681[F] dated 25/03/2021)

+1 CC to M/s.N.DILIPKUMAR, Advocate (SR-14263[F] dated 29/03/2021)

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