BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 25.03.2021

CORAM

**THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN**

W.P.(MD)No.1611 of 2017 and

WMP(MD) No.1321 of 2017

M/s.Sahayamatha Salterns Pvt Limited,
Rep by its Managing Director, Thiru.Michael Motha,
Son of Thiru.John Motha,
13-A/1, Meenakshipuram West,
Tuticorin - 628002. ...Petitioner

Vs.

The Deputy Commissioner of Income Tax,
Circle - 1,
No.19, W G C Road,
Tuticorin. ...Respondent

**PRAYER:** Writ petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, calling for the order in AACCS0545D dated 30.12.2016, on the file of the respondent relating to the A.Y.2013-2014 and quash the same.

For Petitioner : Mr.G.Baskar
For Respondents : Ms.Parameshwari for Mrs.S.Srimathy Standing Counsel

**O R D E R**

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

2.The petitioner is a company engaging in salt manufacturing. The case on hand pertains to the assessment year 2013-2014. The petitioner filed its e-return of income on 28.09.2013, admitting an income of Rs.66,77,810/-.The return of income was selected for scrutiny. The assessment order under Section 143(3) of the Income Tax Act, 1961 was passed on 28.03.2016 and the following additional determination of income was made:-

| | |
|---|---|
| *"Total income returned* | *Rs. 66,77,810* |
| *Add as discussed above* | *Rs.4,41,65,300* |
| *Total income determined* | *Rs.5,08,43,110* |
| *Demand/Refund Due (calculation sheet enclosed)* | *Rs.1,98,76,300* |

*This should be paid as per demand notice and challan enclosed. Penalty proceedings u/s 271 (1) (c) initiated separately."*

3.Aggrieved by the said order, he has filed an appeal before the Appellate Authority and it is said to be still pending. In the meanwhile, the petitioner received a notice dated 28.11.2016 under Section 153C of the Income Tax Act. The issuance of the said notice was a fall out of the search of the premises of one M/s.Diamond Sea Food Exports (DSF Group). It appears that there was a sale transaction between the two parties. Based on the same, after issuing notice under Section 153C, the impugned order dated 30.12.2016 came to be passed. Questioning the same, the present Writ Petition has been filed.

4.The respondent filed a detailed counter affidavit. The learned Standing Counsel appearing for the respondent took me through the contents set out therein. The respondent has chosen to justify the initiation of the proceedings under Section 153C of the Act. It is also stated that there is no double taxation of the petitioner's income. The further objection is that the present Writ Petition cannot be entertained, because the petitioner is very much having liberty of filing an appeal before the Appellate Authority.

5.I have carefully gone through the rival contentions, materials available on record and the impugned order. In the impugned order, the following determination has been made.

| | |
|---|---|
| *Total income returned* | *Rs. 66,77,810* |
| *Add as discussed* | *Rs.4,41,65,300* |
| *Total income Assessed* | *Rs.5,08,43,110* |
| *Demand Payable* | *Rs.2,01,42,550* |

6.As rightly pointed out by the learned counsel for the petitioner, a bare comparison of the Assessment order passed under Section 143(3) of the Income Act and the impugned order passed under Section 153C of the Income Tax Act would show that there is no escapement of the income, even according to the respondent. In fact, the Counter affidavit itself, it has been fairly conceded in paragraph 20 that there is no change in the demand amount and that the overall demand raised in respect of the assessee is Rs.2,01,42,550/- and that no further additional demand has been raised by the impugned order. If there is no escapement of income and the petitioner's income has already been determined in the earlier round, there is absolutely no justification in passing one more order under Section 153C of the Income Tax Act. Such an exercise is nothing but reiteration of the earlier order passed under Section 143(3) of the Income Tax Act.

7.In this view of the matter, the impugned order is quashed. The Writ Petition is allowed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar ()

// 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.

**To**

The Deputy Commissioner of Income Tax,
Circle - 1,
No.19, W G C Road,
Tuticorin.

+1 CC to M/s.S.SRIMATHY, Advocate ( SR-13754[F] dated 25/03/2021 )

+1 CC to M/s.A.CHANDRASEKARAN, Advocate ( SR-13937[F] dated 26/03/2021 )

**W.P.(MD)No.1611 of 2017 and**
**WMP(MD) No.1321 of 2017**
**25.03.2021**

**Ak(12/05/2021) 3P 4C**