IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 12.09.2022

CORAM

THE HONOURABLE **DR. JUSTICE ANITA SUMANTH**

W.P.Nos.1284 & 1298 of 2020 and
WMP.Nos.1542, 1556, 1558 & 1561 of 2020

Kariyagoundanur Muthusamy Chettiar Chinnadurai,
3/99, Sowmiya Karthik Illam,
Kovai Road, Annur,
Coimbatore – 641 653.
PAN No:ACLPC3095Q ... Petitioner in WP.1284 of 2020

Gem Edible Oils Private Limited,
Rep. by its Managing Director,
K.M.Chinnadurai,
3/99, Kovai Road, Ottarapalayam Post,
Coimbatore – 641 653.
PAN No:AACCG3203C ... Petitioner in WP.1298 of 2020

Vs

1.The Assisstant Commissioner of Income Tax,
Corporate Circle 1,
63, Race Course Road,
Coimbatore – 641 018. ... 1st Respondent in WP.1284 of 2020 & Sole Respondent in WP.1298 of 2020

2.The Income Tax Officer,
Investigation,
63, Race Course Road,
Coimbatore – 641 018. ... 2nd Respondent in WP.1284 of 2020

PRAYER in WP.No.1284 of 2020: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, to call for the records on the 1st Respondent in PAN No:ACLPC3095Q / 2012-13 / DIN & Letter No.ITBA/COM/F/17/2019-20/1023298818(1), quash the assessment order dated 28.12.2019 passed therein.

PRAYER in WP.No.1298 of 2020: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, to call for the records on the Respondent in PAN No:AACCG3203C / 2012-13 / DIN & Letter No.ITBA/COM/F/17/2019-20/1023361990(1), quash the assessment order dated 28.12.2019 passed therein.

(In both WPs)
For Petitioners : Mr.P.V.Sudakar

For Respondents : Mr.ANR.Jayaprathap, Junior Standing Counsel

COMMON ORDER

Heard Mr.P.V.Sudakar, learned counsel for the petitioner and Mr.ANR.Jayaprathap, learned Junior Standing Counsel for the respondents. The petitioners challenge orders of assessment for Assessment Year (AY) 2012-13 passed on 28.12.2019 in terms of the provisions of the Income Tax Act, 1961 (in short 'Act').

2. The crux of the assessment is the assessability or otherwise of a sum of Rs.10 lakhs that is claimed to have been received as a loan from one Mr.R.Srinivasan during financial year (FY) 2011-12. The assessment of the petitioner has been re-opened based on a verification of the bank account statement of the said R.Srinivasan that revealed substantial cash credits.

3. The assessment of R.Srinivasan had been re-opened on the ground that he had not filed return of income for several years and he had come to challenge the notice issued by the Income Tax Department in WP.No.35542 of 2019. That had been dismissed by this Court on 03.02.2020 holding the same to be pre-mature and directing that the assessment proceedings shall continue and be finalized in accordance with law.

4. I am given to understand by the learned Standing Counsel that the assessment has been completed in the hands of Srinivasan, adverse to him. A statutory appeal has been filed by him challenging the same that is stated to be pending.

5. The loan that the petitioner claims to have received and which constitutes the subject matter of the impugned order of assessment emanates from, and out of the cash credits lying to the balance of R.Srinivasan in his bank accounts. Thus, the two matters, the assessment of R.Srinivasan and the impugned assessment of the petitioner, are inextricably connected.

6. That apart, the petitioner is a Director in Gem Edible Oils Private Limited (in short 'Company'), one of the petitioners before me now. The company also claims to have received several loans from Srinivasan and the identical addition as made in the present impugned assessment, had come to be made in the hands of the company for an earlier assessment year.

7. The assessment made in the hands of the company for the earlier year had come to be challenged in W.P.No.10769 of 2022 and by order dated 27.04.2022, a learned Single Judge of this Court dismissed the writ petition, granting liberty to the petitioner company to file a statutory appeal within a time frame fixed by the Court. A Writ Appeal was filed as against the aforesaid order in W.A.No.1850 of 2022 that has also come to be dismissed by the Division Bench on 25.08.2022.

8.Thus, it is clear that all the matters relating to determination of the issue as to whether the cash credits resulting from the loans allegedly given by R.Srinivasan, are genuine. It is appropriate that the aforesaid issue be decided by the appellate authority, who would have the requisite mechanism to call for various relevant details and determine the facts in a proper manner.

9.Learned counsel for the petitioners draws attention to the fact that the notice received prior to finalisation of the impugned assessment had granted only two days for filing of reply. The notice is dated 24.12.2019 and calls for a reply to be filed on 26.12.2019. On 26.12.2019, the petitioner has written to the Department asking for various documents relied upon in notice dated 24.12.2019 and seeking more time to respond to the same. The impugned order of assessment has come to be passed on 26.12.2019, without reference to the petitioner's request.

10.Though the above position might be construed as a violation of principles of natural justice, I am not inclined to set aside the impugned order merely on this score, bearing in mind the facts and circumstances as noted above. The appeals of the company as well as R.Srinivasan involving identical issues are before the Appellate authority and thus, it would stand to reason that the case of the petitioners is also taken up in appeal. In my considered view, a violation of natural justice is not fatal in all situations and a wholistic view should be taken of the issue, such that the interests of all parties are properly balanced.

11.The powers of an appellate authority are co-terminus with that of an assessing authority and the details sought for by the petitioner may well be supplied to the petitioner by the appellate authority to ensure that the petitioner is granted full opportunity to put forth his case in appeal. In fine, the impugned assessment orders are upheld and the petitioner is granted liberty to file appeal, if he so desires, within a period of two (2) weeks from today.

12. It is necessary, to give full effect to this order, that all appeals as above, the appeals filed by the company as well as R.Srinivasan, as well as the appeals for the filing of which liberty is granted to the petitioners, be consolidated and taken up for hearing together. Both the writ petitions are

dismissed though with liberty as above. No costs. Connected miscellaneous petitions are closed.

12.09.2022

vs
Index : Yes / No
Speaking Order

Note:Registry is directed to return the original impugned assessment order to the learned counsel for the petitioner.

To

1.The Assisstant Commissioner of Income Tax,
Corporate Circle 1,
63, Race Course Road,
Coimbatore – 641 018.

2.The Income Tax Officer,
Investigation,
63, Race Course Road,
Coimbatore – 641 018.

DR.ANITA SUMANTH, J.

Vs

W.P.Nos.1284 & 1298 of 2020 and
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