IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.11.2022

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THE HONOURABLE **DR. JUSTICE ANITA SUMANTH**

W.P.No.2440 of 2020 &
WMP.No.2837 of 2020

Muthukaruppaiah Sundar ... Petitioner

Vs.

The Income Tax Officer,
Non-Corporate Ward 19(4) CHE,
Aayakar Bhavan-Annexe Building,
No.121, Mahatma Gandhi Road,
Nungambakkam, Chennai-34 ... Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of certiorari, calling for the records of the respondent in PAN CHQPS2044M vide order No.ITBA/AST/S/143-3/2019-20/1023245885(1) dated 27.12.2019 and raised a demand under Section 156 of the Income Tax Act in No.ITBA/AST/S/156/2019-20/1023246003(1) dated 27.12.2019 and quash the same.

For Petitioner : Mr.K.Soundara Rajan
For Respondents : Mr.Hema Murali Krishnan
Senior Standing Counsel

ORDER

The petitioner has challenged an order of assessment passed under the provisions of the Income Tax Act, 1961 (in short 'Act') dated 27.12.2019.

This writ petition has been filed on 29.01.2020 within the statutory limitation for filing of first appeal.

2. When the matter had come up for admission on 04.02.2020, the following order was passed:

> *Mr.Prabhu Mukunth Arun Kumar, learned Junior Standing Counsel accepts notice for the respondent and seeks some time to obtain instructions and file a counter.*
>
> *2. An addition has been made as deemed income on the ground that purchases to the extent of Rs.25,25,413/- have been suppressed. This addition is based on financials and purchase ledger of the petitioner obtained from BPCL by issue of notice under Section 133(6) of the Income Tax Act, 1961. While reliance on third party material in support of an assessment is permissible, such material has to be put to the assessee for rebuttal, particularly if the conclusion therefrom is adverse.*
>
> *3. This, prima facie, does not appear to have been done. For this reason, there shall be an order of interim stay of recovery of the demand in relation to addition of Rs.25,15,413/- only.*
>
> *4. Other additions/disallowance in the impugned order of assessment have been effected after affording sufficient opportunity to the assessee and no infirmity in law warranting interference in terms of Article 226 is made out in such cases. The petitioner requests, and is permitted to avail statutory remedy of appeal in relation to the same. Such appeal, if filed within two (2) weeks from today, will be received by the Registry of the Commissioner of Income Tax (Appeals) and taken up for hearing without reference to limitation.*
>
> *5. List on 26.02.2020. Counter by then to the extent as stated above, with an advance copy served on the petitioner.*

3. Pleadings have been completed pending writ petition and in the counter filed by the sole respondent i.e. the Assessing Officer on 21.10.2022, at para 4 page 2 of the counter, the assessing officer points out that the appeal for which liberty was granted to the petitioner has been filed on 05.11.2022 raising a dispute in regard to all additions including the addition of a sum of Rs.25,15,413/- in respect of difference in purchase value.

4. For the aforesaid reason, the Assessing Officer has taken the stand that the petitioner cannot be permitted to ride two horses that is to agitate the matter in statutory appeal as well as maintain this present writ petition. I am in agreement with the stand in the counter.

5. To be noted that the appeal filed before the authority is beyond the time granted by this Court in the order passed on 04.02.2020. However, the writ petition has been pending for a while and, admittedly, statutory appeal has already been filed before the Authority.

6. In the aforesaid circumstances, this Court takes a lenient view of the delay in filing of the first appeal and permits the petitioner to pursue the appeal before the statutory authority on merits. It is made clear that the first appellate authority shall hear the appeal without reference to limitation but on merits, in accordance with law.

7. This writ petition is dismissed with liberty as aforesaid. No costs. Connected miscellaneous petition is closed.

ska **14.11.2022**
Index : Yes/No
Speaking Order

To

The Income Tax Officer,
Non-Corporate Ward 19(4) CHE,
Aayakar Bhavan-Annexe Building,
No.121, Mahatma Gandhi Road,
Nungambakkam, Chennai-34

Dr.ANITA SUMANTH, J.,

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