IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 22.03.2022

CORAM

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

W.P. NO. 6426 OF 2022
AND
W.M.P. NOS. 6515 & 6516 OF 2022

M/s.Stahl India Pvt. Ltd.
Rep. by its Authorised Signatory
Mr. S.Saravanan
1A, Sargunar Salai, Chrompet
Kanchipuram
Tamil Nadu 600 044. ..Petitioner

- Vs -

The Prl. Commissioner of Income Tax
PCIT, Chennai – 3
Aayakar Bhawan, No.121, Mahatma Gandhi Road
Nungambakkam
Chennai 600 034. ..Respondents

Writ petition filed under Article 226 of the Constitution of India praying this Court to issue a writ of certiorari to call for the records comprised in the impugned notice bearing Notice No.ITBA/REV/F/REV1/2021-22/1040296636(1) dated 03.03.2022 issued by the respondent u/s 263 of the Act for AY 2017-2018 and quash the same.

For Petitioner : Mr.N.V.Balaji

For Respondent : Mr. A.P.Srinivas

ORDER

The present petition has been filed seeing to quash the impugned notice issued by the respondent u/s 263 of the Income Tax Act.

2.It is the case of the petitioner that it filed original income Tax Return (for short 'ITR') u/s 139 of the Income Tax Act for the Assessment Year 2017-2018 and subsequently filed revised ITR for the purpose of updating the manner of disclosing certain disallowances as per the tax audit report. It is the further averment of the petitioner that its case was selected for scrutiny assessment vide notice dated 9.08.2018 issued u/s 143 (2) of the Act by the Assessing Officer. During the assessment proceedings, various details were called for by issuance of notice, which were duly filed by the petitioner. With respect to the depreciation claimed on goodwill and addition to tangible assets, in response to the notice, the petitioner submitted details and submitted that it was eligible for depreciation. The Assessing Officer, being satisfied with the materials and explanation offered by the petitioner accepted the return of income resulting in a refund of Rs.1.66 Crores by completing the assessment u/s 143 (3) of the Act. An order u/s 154 of the Act was passed by the Assessing Officer for processing the refund. However, to the shock and surprise of the petitioner, the impugned notice, dated 3.3.2022 was issued by the respondent u/s 263 of the Act invoking the revisionary jurisdiction contending that the Assessing Officer failed to disallow the depreciation claim. It is the contention of the petitioner that the impugned order is illegal as the same has been passed without satisfying the necessary ingredients for invoking Section 263 of the Act and it amounts to an abuse of process of law, which would cause irreparable loss and hardship to the petitioner. Therefore, the petitioner has approached this Court by invoking its inherent jurisdiction by filing the present petition.

3.When the matter is taken for hearing, learned Standing Counsel appearing for the respondent submitted that a remedy of appeal is available to the petitioner under the Act as against the impugned notice issued by the respondent and without availing the said remedy, the filing of the present petition is not maintainable.

4.When the learned counsel for the petitioner was confronted with the above, learned counsel for the petitioner submitted that the order passed by the respondent is bereft of any materials and the impugned order reflects non-application of mind on the part of the respondent and though appeal remedy is available, but the petitioner is entitled to canvass all those issues even before this Court when the impugned order has been passed on total non-application of mind. Therefore, he prays for allowing the present writ petition.

5.Though the contention of the petitioner is attractive, but the fact remains that an appeal remedy is available. Such being the case, this Court is of the view that without exhausting the same, it would not be right on the part of the petitioner to come before this Court with this writ petition. Therefore, this Court, without going into the merits of the contention, directs the petitioner to file appropriate appeal before the appellate authority along with a copy of this order within a period of four weeks from the date of receipt of a copy of this order. On such appeal being filed within the period prescribed, the appellate authority shall take up the same and pass orders therein within a period of four weeks thereafter.

6.The writ petition is disposed of with the aforesaid direction. Consequently, connected miscellaneous petitions are closed. There shall be no order as to costs.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

GLN

To

The Prl. Commissioner of Income Tax
PCIT, Chennai - 3
Aayakar Bhawan, No.121, Mahatma Gandhi Road
Nungambakkam
Chennai 600 034.

+1cc to Mr.A.P.Srinivas, Advocate, S.R.No.19576

+1cc to M/s.N.V.Balaji, Advocate, S.R.No.20020

W.P.NO.6426 OF 2022

PL(CO)
RGA(08/04/2022)