IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.06.2022

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THE HONOURABLE DR.JUSTICE ANITA SUMANTH

W.P.NO.11146 OF 2022
AND
WMP NOS.10739 AND 10740 OF 2022

M/s.Vishwatej Ventures Private Limited
represented by its Director
Mr.A.R.Muralikrishna ...Petitioner

Vs.

The Additional/Joint/Deputy/Assistant Commissioner
of Income Tax/Income Tax Officer,
National e-assessment Centre,
Delhi. ...Respondent

PRAYER : Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari calling for the records on the file of the respondent and quash the impugned order in ITBA/AST/S/143(3)/2021-22/1042157412(1) dated 30.03.2022 under Section 143(3) read with Section 144B of the Income Tax Act, 1961 passed by the respondent for assessment year 2018-19 as illegal and not in accordance with law.

For Petitioner : Mr.R.Sivaraman

For Respondent : Mrs.Hema Muralikrishnan
Senior Standing Counsel

ORDER

Mrs.Hema Muralikrishnan, learned Senior Standing Counsel accepts notice for the respondent and is armed with instructions to proceed with the matter finally even at this juncture. Hence, by consent of both learned counsel, this Writ Petition is disposed finally even at the stage of admission.

2. The petitioner has assailed an order of assessment dated 30.03.2022 passed under Section 143(3) read with Section 144B of the Income Tax Act, 1961 (in short 'Act') for the assessment year 2018-19.

3. The main ground of challenge is lack of opportunity that has been afforded to the petitioner in this case. The Return filed by the assessee was taken up for scrutiny and one of the issues that was identified relates to the purchase of land by a Land Owning Company (LOC) during financial years 2007-08 and 2008-09. It appears that the shares of the aforesaid LOC was acquired by the petitioner and valuation of the shares was arrived at in terms of Rule 11UA (wrongly stated as Section 11 UA at paragraph 5.1 of the impugned assessment order). The valuation report revealed the value arrived at, at the time of transfer of shares in August, 2017. The petitioner was asked to produce a copy of the valuation report, but expressed its inability to do so stating that the concerned Accountant was not in its employment at that time.

4. The Assessing Authority, however, was of the view that the valuation furnished by the petitioner did not reflect the proper share value, and proceeded to refer their valuation to the Technical Unit on 27.09.2021 (erroneously stated as 27.09.2022 at paragraph 5.2 of the impugned order) in terms of Section 142A of the Act. The statutory provision required the valuer to submit a valuation report within 6 months from the end of month when the reference had been made.

5. The Assessing Authority however, and in the meantime, has proceeded to complete the assessment on the basis of an adhoc valuation, pending verification and finalisation by the valuation department. An addition has thus come to be made to the total income of the assessee based on the aforesaid valuation, albeit of an adhoc amount that does not, admittedly reflect the proper value of the shares.

6. To be noted, the officer himself states that the adhoc valuation arrived at by him would be subject to the final valuation as and when prepared by the valuation officer and that the final assessment would be modified to such effect, if and when the valuation officer adopts a different figure valuation report. The relevant paragraph of the assessment order in this regards reads as follows:

> 5.2. The submission of the assessee was perused. However, the valuation given by the assessee is not seems to be correct and as per the current market value. Accordingly, the matter was referred to the Technical Unit for Valuation on 27.09.2022 as per the provisions of Section 142A of the Income Tax Act. The valuer has to submit its Valuation Report submitted within six month from the end of the month in which reference was made. However, the Valuation Report is still not received in this case.

As the limitation of completing the assessment proceeding is 31.03.2022 and till the pendency of the Valuation Report, the valuation of these companies is taken at Rs.191,91,41,090/- as proposed & show caused vide notice u/s 142(1) dated 20.03.2022. Accordingly, an amount of Rs.172,72,02,681/- is added to the total income of the assessee under the head "Income from Other Sources" as per the provisions of Section 56(2)(x)(c) of the Act. However, it is informed that this Valuation is subject to change as and when the Report of the Valuation Officer is received. The addition u/s 56(2)9x)(c) will be rectified accordingly to the Valuation Report.

7. In such a scenario and seeing as the officer has himself conceded to the position that the valuation of the shares was yet to be determined as on the date when the assessment was finalised, it would be appropriate that the addition made in relation to the value of shares be set aside and the Assessing Authority be directed to redo the assessment taking note of the valuation, once determined by the authority. Let the valuation report, once received, be supplied to the assessee, its views solicited and taken note of and the assessment be proceeded with and finalised, in accordance with law.

8. In fine, the impugned order of assessment dated 30.03.2022, in so far as it relates to the addition relating to share valuation, is set aside and the matter remanded back to the file of the Assessing Officer, who shall furnish a copy of the valuation report, once received, to the petitioner, hear the petitioner in this regard and pass an order of assessment on this aspect of the matter expeditiously and in any event, within a period of four (4) weeks from date of receipt of a copy of the valuation report.

9. It is made clear that impugned order of assessment dated 30.03.2022 is left untouched on all other aspects, save the issue dealt with under this order.

10. This Writ Petition stands disposed as above. No costs. Connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CS-V)

// True Copy //

Sub Assistant Registrar

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To

The Additional/Joint/Deputy/Assistant Commissioner
of Income Tax/Income Tax Officer,
National e-assessment Centre,
Delhi.

+1cc to M/s.Hema Muralikrishnan, Advocate Sr.No.32335

W.P.No.11146 of 2022
and WMP Nos.10739 and 10740 of 2022

RR(CO)
RVM(29/06/2022)