BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 17.02.2022
CORAM
THE HONOURABLE MR.JUSTICE C.SARAVANAN
Writ Petition (MD) No.6598 of 2020
and
W.M.P.(MD)No.5950 of 2020

Krishnamoorthy Packiyalakshmi ... Petitioner

Versus

The Income Tax Officer,
Ward 1 (2) Trichy, Income Tax Department,
2nd Floor, Trichy Main Building,
Williams Road,
Cantonment, Tiruchirappalli - 620001. ... Respondent

PRAYER : Petition filed under Article 226 of The Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records in ITBA/AST/S/144/2019-20/1023036756(1), dated 24.12.2019, on the file of the respondent, quash the same as it is arbitrary, unreasonable and is against the principles of natural justice and direct the respondent to pass assessment order afresh after giving an opportunity of personal hearing to the petitioner.

For Petitioner : Mr.S.Karunakar, Advocate
For Respondent : Mr.N.Dilipkumar
Senior Standing Counsel

ORDER

The petitioner has challenged the impugned assessment order dated 24.12.2019 on the ground that the impugned order has been passed without giving adequate opportunity to the petitioner to give reply to the show cause notice dated 16.12.2019.

2.It is the case of the petitioner that the petitioner had maintained proper books of accounts and had filed returns in time and had offered the correct income for tax.

3.The learned counsel for the petitioner submits that between 08.11.2016 and 30.12.2016, some of the petitioner's customers have deposited demonetized currency to the account of the petitioner, as a result of which, the respondent issued a show cause notice for the Assessment Year 2017-2018 [previous year 2016-2017] and had confirmed the tax and interest of Rs.11,19,994/-.

4.The learned counsel for the petitioner further submits that the aforesaid amount cannot be taxed. The learned counsel for the petitioner also submits that the petitioner has also maintained proper books of accounts and also has paid Value Added Tax on the transaction.

5.Opposing the prayer, the learned Senior Standing Counsel for the respondent submits that the Writ Petition is without merits and the petitioner ought to have filed statutory appeal under Section 246-A of the Income Tax Act. It is further submitted that the petitioner was issued with show cause notice on 16.12.2019 and that even prior to 16.12.2019, a notice was issued to the petitioner. However, the petitioner failed to avail the opportunity and therefore, the impugned order has been passed based on the available materials.

6.The learned Senior Standing Counsel for the respondent further submits that there is no dispute that the petitioner had deposited a sum of Rs.8,95,000/- on various dates during the period in dispute, for which, no tax was offered by the petitioner.

7.I have heard the learned counsel for the petitioner and the learned Senior Standing Counsel for the respondent.

8.*Prima facie*, I do not find any reason to interfere with the impugned order in the Writ Petition. The petitioner has an alternate remedy by way of appeal before the Appellate Commissioner. However, the petitioner has filed the Writ Petition *i.e.,* on 23.03.2020, after allowing the period of limitation prescribed under Section 246-A of the Income Tax Act, to expire.

9.Therefore, without expressing any opinion as to which the petitioner has a good case on merits or not, I am inclined to dismiss this Writ Petition with liberty to the petitioner to file an appeal before the Appellate Commissioner under Section 246-A of the Income Tax Act, within 30 days from the date of receipt of a copy of this order. Needless to state that it is open to the petitioner to move an appropriate application under Section 220(6) of the Income Tax Act before the respondent, who shall pass appropriate orders on merits and in accordance with law taking note of the decision of the Hon'ble Supreme Court in **Principal Commissioner of Income Tax and others vs. L.G. Electronics India Private Limited [2018 (18) SCC 447]**. If such appeal is filed, the appellate Commissioner shall take up the same and dispose it on merits and in accordance with law, within a period of three months from the date of receipt of a copy of this order. If appropriate application under Section 220(6) of the Income Tax Act is made before the respondent within 30 days, appropriate orders shall be passed in accordance with law.

10.This Writ Petition stands dismissed with the above observation. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS-III)

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/ /2022

Sub Assistant Registrar(CS)

To

The Income Tax Officer,
Ward 1 (2) Trichy, Income Tax Department,
2nd Floor, Trichy Main Building,
Williams Road,
Cantonment, Tiruchirappalli - 620001.

+1 CC to M/s.N.DILIPKUMAR, Advocate (SR-7226[F] dated 18/02/2022)

+1 CC to M/s.S.KARUNAKAR, Advocate (SR-7584[F] dated 21/02/2022)

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