BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 29.11.2022

CORAM

THE HONOURABLE MR. JUSTICE MOHAMMED SHAFFIQ

W.P.(MD).No.14833 of 2022
and
W.M.P.(MD).No.10608 of 2022

Tvl.Saravana Furniture,
Represented by its Proprietor,
J.Saravanakumar. ... Petitioner

Vs.

1.The Commissioner of Commercial Taxes,
O/o. The Principal and Special Commissioner of
Commercial Taxes,
Ezhilagam,
Chepauk,
Chennai – 600 005.

2.The Assistant Commissioner (ST),
Sivagangai Assessment Circle,
Commercial Taxes Office,
No.3, Oversupillai Street,
Sivagangai – 630 561. ...Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, calling for records pertaining to the impugned proceedings of the 2nd respondent in TIN : 33635403033/2015-16 dated 16.02.2022 and quash the same.

For Petitioner : Mr.B.Rooban

For Respondents : Mr.T.Amjad Khan,
Government Advocate.

ORDER

This Writ Petition is filed challenging the impugned proceedings of the second respondent dated 16.02.2022 for the assessment year 2015-16.

2. The short question that arises for consideration is whether it is open to the Assessing Officer to treat the difference between cash deposit in Bank and the sales reported in the return as representing sales suppression.

3. It is submitted by the learned counsel for the petitioner that the petitioner with a view to expand his business had obtained loans from his friends, which represents the alleged difference between the Bank statement and the sales statement, but do not relate to transactions of sale.

4. It is submitted by the learned counsel for the petitioner and the learned Government Advocate appearing for the Respondents in unison that the issue stands covered by a decision of this Court in W.P.(MD).No.13787 of 2020,

wherein, while dealing with a similar question, this Court has followed the judgment of Hon'ble Supreme Court in the case of ***Girdhari Lal Nannelal Vs. the Sales Tax Commissioner*** reported in ***39 STC 30 SC***, wherein, it was held that for the purpose of levy of sales tax mere unexplained acquisition of money from un-disclosed sources may not be adequate and it is necessary for the Assessing Officer to show sources of money resulted from transactions liable to sales tax. The relevant portion of the order reads as follows:

> *"7. The approach which may be permissible for imposing liability for payment of income-tax in respect of the unexplained acquisition of money may not hold good in sales tax cases. For the purpose of income-tax it may in appropriate cases be permissible to treat unexplained acquisition of money by the assessee to be the assessee's income from undisclosed sources and assess him as such. As against that, for the purpose of levy of sales tax it would be necessary not only to show that the source of money has not been explained but also to show the existence of some material to indicate that the acquisition of money by the assessee has resulted from transactions liable to sales tax and not from other sources. Further, whereas in a case like the present a credit entry in respect of Rs. 10,000 stands in the name of the wife of the partner, no presumption arises that the said amount represents the income of the firm and not of the partner or his wife. The fact that neither the assessee-firm nor its partner or his wife adduced satisfactory*

material to show the source of that money would not, in the absence of anything more, lead to the inference that the said sum represents the income of the firm accruing from undisclosed sale transactions. It was, in our opinion, necessary to produce more material in order to connect the amount of Rs. 10,000 with the income of the assessee-firm as a result of sales. In the absence of such material, the mere absence of explanation regarding the source of Rs. 10,000 would not justify the conclusion that the sum in dispute represents profits of the firm derived from undisclosed sales."

5. In view of the same, the impugned order is set aside with liberty to the Respondents to redo the assessment after examining and rendering a finding on the basis of material, if the difference between Bank statements and Returns filed under Tamil Nadu Value Added Tax, 2006, represents transaction of sales of sales, keeping in mind the principles laid down in the case of ***Girdhari Lal Nannelal (39 STC 30 SC)*** cited supra and also affording an opportunity to the petitioner and after taking into account the petitioner's submission and dealing with the same.

6. This Writ Petition is disposed of. There shall be no order as to costs. Consequently, connected miscellaneous petition stands closed.

29.11.2022

Index : Yes / No
Internet : Yes/ No
Lm

To

1.The Commissioner of Commercial Taxes,
O/o. The Principal and Special Commissioner of Commercial Taxes,
Ezhilagam,
Chepauk,
Chennai – 600 005.

2.The Assistant Commissioner (ST),
Sivagangai Assessment Circle,
Commercial Taxes Office,
No.3, Oversupillai Street,
Sivagangai – 630 561.

MOHAMMED SHAFFIQ, J.

Lm

W.P.(MD).No.14833 of 2022
and
W.M.P.(MD).No.10608 of 2022

29.11.2022