BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 24.11.2022

CORAM

THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P.(MD)No.4790 of 2022
and
W.M.P.(MD)No.3976 of 2022

M/s.Meenakshi Mission Hospital and Research Centre,
Run by S.R.Trust,
Represented by its Authorised Signatory Mr.Kannan Baskaran,
Lake Area, Uthangudi,
Madurai – 625 107. ... Petitioner

Vs.

The State Tax Officer,
Melur Assessment Circle,
Commercial Taxes Buildings,
Madurai. ... Respondent

PRAYER : Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus calling for the records in TIN No.33684941237/2014-15 dated 14.07.2021 and quash the same as non-speaking, arbitrary, illegal and clear violation of principles of natural justice and being contrary to Circular dated 03.02.2014 in Circular No.7/2014BB1/3589/2014 issued by the Principal Secretary / Commissioner of Commercial Taxes, Chennai and pass an assessment order afresh by considering the replies and records dated 07.05.2018 and 07.09.2018 filed by the Petitioner after affording opportunity of personal hearing.

For Petitioner : Mr.S.Karunakar

For Respondent : Mr.M.Siddharthan
Additional Govt. Pleader

O R D E R

The principle ground of challenge in the present Writ Petition is that the impugned order for the Assessment Year 2014-15 is a non-speaking order.

2. It is submitted by the learned counsel for the Petitioner that the Petitioner is a reputed Hospital catering to Health Care Services and was an assessee under the erstwhile Tamil Nadu Value Added Tax Act, 2006 on the file of the Respondent. There was an inspection of the Petitioner's place of business by the Enforcement Wing on 15.09.2015. During the course of inspection, number of defects were noticed, *inter-alia*, including non-deduction of TDS. Pursuant to the above inspection, a notice dated 07.05.2018 was issued, *inter-alia* proposing the following:

Details	*Turnover*	*Tax*	*Penalty*	*Interest*	*ITC*	*Penalty*
1.TDS on building at 2%	10,48,97,462-	20,97,949-	-	90,688-	-	-
2.Sales return	1,61,90,240-	8,32,137-	-	-	-	-
3.Sales omission out of purchase turnover diff.at 14.5%	2,29,472-	33,273-	51,154-	-	-	-
4.Discount at 14.5%	2,95,917-	42,908-	-	-	-	-
5.Misc.receipt at 14.5%	1,43,423-	20,796-	-	-	-	-
6.ID card at 5%	22,400-	1,120-	-	-	-	-
7.Xerox collection at 5%	81,705-	4,085-	-	-	-	-
8.Optical Income at 14.5%	4,76,095-	69,034-	-	-	-	-
9.ITC reversal on cross verification	-	-	-	-	18,755-	9,378-
10.Misc. income at 14.5%	20,64,897-	2,99,410-	-	-	-	-
11. TDS on AMC at 2%	1,33,42,458-	2,66,849-	-	-	-	-
Total	**13,77,44,069-**	**36,67,561-**	**51,154-**	**90,688-**	**18,755-**	**9,378-**

3. The Petitioner filed its objections/ reply dated 07.05.2018 and 07.09.2018, wherein, *inter-alia* raising the following:

a) That the civil works was executed by their In-house Civil Department with their own team and thus question of deduction of TDS may not arise. It was further submitted that the petitioner had submitted evidence and offered its explanation before the Enforcement Wing authorities during the course of inspection on 15.09.2015 and submitted books of accounts and other records.

b) That the difference of sales turnover had crept in Form-WW inadvertently. However, the sales turnover was reported correctly in the returns.

c) That the sales return related to medicines returned by the patients in respect of which credit notes were not filed as the sales returns were in large numbers.

d) That the xerox collections relate to works contract and hence labour charges are liable to be deducted.

e) That the ID card charges does not constitute a sale.

f) That the difference in pharmacy sales was explained stating that they effected zero rate sale

g) That miscellaneous receipts represent sale of obsolete items.

h) That the AMC was for pure labour and does not involve transfer of property.

4. The Assessing Officer, considering the objection found that

i) The petitioner had filed the copies of their ledger account in respect of construction of building to an extent of Rs.6,68,04,250/- and found that the petitioner had filed copies of purchase bills for the raw materials purchased in their name, and that verification of the documents revealed that the petitioner had assigned work to other / outside contractors and thus liable to deduct taxes on payments to such contractors under Section 13 of the TNVAT Act.

(ii) The explanation of the petitioner in respect of other proposals were insufficient for want of documentary evidence for the following cases, viz., sales return, xerox collections, ID card charges and difference in pharmacy sales etc.,

5. It is submitted by the learned Additional Government Pleader for the Respondent that the impugned order is appealable, thus the exercise of power under Article 226 of the Constitution of India is unwarranted in view of the existence of alternate remedy, as the issue involves disputed questions of facts.

6. This Court is of the view that to decide the legality of the impugned order of assessment, it may necessarily involve examination of the following disputed questions of facts *viz.,*

a) Whether the construction activity was executed by the petitioner's In-house team or by engaging contractors.

b) If contractors were engaged, whether the nature of contract entered into between the petitioner and the contractor are works contract and the extent of the contract executed by such contractors.

c) Whether the petitioner is liable to deduct TDS on the payments made to the contractors.

d) Whether the difference between Form-WW and return represents actual transaction of sales of goods or otherwise?

e) Whether the sales return in the absence of documentary evidence is eligible for deduction?

f) Whether the ID card charges represents pure contract of service?

g) Whether AMC is pure labour contract or one which involves both labour as well as goods and would constitute works contract?

7. It is trite law that adjudication of disputed questions of fact is outside the purview of Article 226 of the Constitution of India. In this regard, it may be relevant to refer to the following judgment of the Supreme Court in the case of ***Thansingh Nathmal v. Supt. of Taxes,*** reported in ***AIR 1964 SC 1419,*** wherein, the Constitution Bench of this Court made it amply clear that although the power of the High Court under Article 226 of the Constitution is very wide, the Court must exercise self-imposed restraint

and not entertain the Writ Petition, if an alternative effective remedy is available to the aggrieved person. In para 7, the Court observed thus :

> *"7. Against the order of the Commissioner an order for reference could have been claimed if the appellants satisfied the Commissioner or the High Court that a question of law arose out of the order. But the procedure provided by the Act to invoke the jurisdiction of the High Court was bypassed, the appellants moved the High Court challenging the competence of the Provincial Legislature to extend the concept of sale, and invoked the extraordinary jurisdiction of the High Court under Article 226 and sought to reopen the decision of the taxing authorities on question of fact. The jurisdiction of the High Court under Article 226 of the Constitution is couched in wide terms and the exercise thereof is not subject to any restrictions except the territorial restrictions which are expressly provided in the Articles.*

But the exercise of the jurisdiction is discretionary : it is not exercised merely because it is lawful to do so. The very amplitude of the jurisdiction demands that it will ordinarily be exercised subject to certain self-imposed limitations. Resort to that jurisdiction is not intended as an alternative remedy for relief which may be obtained in a suit or other mode prescribed by statute. Ordinarily the Court will not entertain a petition for a writ under Article 226, where the petitioner has an alternative remedy, which without being unduly onerous, provides an equally efficacious remedy. Again the High Court does not generally enter upon a determination of questions which demand an elaborate examination of evidence to establish the right to enforce which the writ is claimed. The High Court does not therefore act as a court of appeal against the decision of a court or tribunal, to correct errors of fact, and does not by assuming jurisdiction under Article 226 trench upon an alternative remedy provided by statute *for obtaining relief. Where it is open to the aggrieved petitioner to move another tribunal, or even itself in another jurisdiction for obtaining redress in the manner provided by a statute, the High Court normally will not permit by entertaining a petition under Article 226 of the Constitution the machinery created under the statute to be bypassed, and will leave the party applying to it to seek resort to the machinery so set up."*

(emphasis supplied)

There can be no doubt that even though the High Court can entertain a Writ Petition against any order or direction passed / action taken by the State and / or its authorities under Article 226 of the Constitution, it ought not to do so as a matter of course when the aggrieved person could have availed of an effective alternative remedy in the manner prescribed by law.[1]

1 *Baburam Prakash Chandra Maheshwari* v. *Antarim Zila Parishad* [*Baburam Prakash Chandra Maheshwari* v. *Antarim Zila Parishad*, AIR 1969 SC 556] and also *Nivedita Sharma* v. *COAI* [*Nivedita Sharma* v. *COAI*, (2011) 14 SCC 337 : (2012) 4 SCC (Civ) 947]

8. In view of the same, the Writ Petition is dismissed, however, liberty is granted to the Petitioner to file a statutory appeal within a period of three weeks from the date of receipt of a copy of this order. If such appeal is filed, the same shall be entertained and disposed of by the Appellate Authority as expeditiously as possible. No costs. Consequently, connected Miscellaneous Petition is closed.

24.11.2022
(4/6)

Index : Yes / No
Speaking Order : Yes / No

vji

MOHAMMED SHAFFIQ, J.,

vji

To

1. The State Tax Officer,
   Melur Assessment Circle,
   Commercial Taxes Buildings,
   Madurai.

2. The Authorised Signatory,
   M/s.Meenakshi Mission Hospital and Research Centre,
   Run by S.R.Trust,
   Lake Area, Uthangudi,
   Madurai – 625 107.

W.P.(MD)No.4790 of 2022
and
W.M.P.(MD)No.3976 of 2022

24.11.2022
(4/6)