IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.01.2023

CORAM :

The Hon'ble MR.JUSTICE ABDUL QUDDHOSE

W.P. No.1807 of 2023
and W.M.P.Nos.1923 and 1925 of 2023

M/s.Tamil Nadu State Marketing Corporation
Ltd., 4th Floor, CMDA Tower-II,
Gandhi Irwin Bridge Road, Egmore,
Chennai 600 008, Rep. by its Managing
Director, Shri.Dr.L.Subramanian. .. Petitioner

-vs-

1. Assessment Unit,
Income Tax Department.

2. The Deputy Commissioner of Income Tax,
Corporate Circle-3(1),
121, Mahatma Gandhi Road,
Chennai 600 034. .. Respondents

Petition filed under Article 226 of the Constitution of India praying for issue of Writ of Certiorari to call for the records of the petitioner on the file of the 1st respondent and quash the impugned Assessment Order in DIN: ITBA/AST/S/143(3)/2022-23/1048249481(1) dated 26.12.2022 for the assessment year 2021-22 in PAN: AAACT2964P passed by the 1st respondent.

For Petitioner : Mr.R.Vijaya Raghavan
for M/s.Subbraya Aiyar
Padmanabhan

For Respondents : Mr.D.Prabhu Mukunth Arun Kumar
Jr. Stdg. Counsel

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ORDER

The petitioner has challenged the impugned assessment order dated 26.12.2022 passed under Section 143(3) read with Section 144B of the Income Tax Act, 1961, in this writ petition.

2. The main contention of the petitioner in this writ petition is that the Value Added Tax will not fall under Section 40(a)(iib) of the Income Tax Act, as it cannot be equated to royalty, licence fee, service fee, previlege fee, service charge or any other fee or charge by whatever name called.

3. The learned counsel for the petitioner/TASMAC also drew the attention of this Court to a judgment of the Hon'ble Supreme Court in the case of ***Kerala State Beverages Manufacturing & Marketing Corporation Ltd. vs. The Assistant Commissioner of Income***

Tax, Circle 1(1) passed in ***Civil Appeal No.11 of 2022*** on ***03.01.2022***. In the aforesaid decision, while dealing with sales tax and considering the scope of Section 40(a)(iib) of the Income Tax Act, the Hon'ble Supreme Court has held that the fee or charge as mentioned in Section 40(a)(iib) is clear in terms and that will take in only the fee or charge as mentioned therein or any fee or charge by whatever name called, but cannot cover the tax or surcharge on tax and such taxes are outside the ambit and scope of Section 40(a)(iib) of the Act.

4. Since the Hon'ble Supreme Court in the aforesaid decision has held that taxes will not come within the purview of Section 40(a)(iib) of the Income Tax Act, the petitioner has challenged the impugned assessment order on the ground that by total non-application of mind to the settled law, the Department has disallowed the deductions claimed towards VAT by erroneously applying Section 40(a)(iib) of the Income Tax Act.

5. However, as seen from the averments contained in the affidavit filed in support of the writ petition, there is an impediment for

this Court to entertain this writ petition in view of the following reasons:

a) The petitioner, for a different assessment order, had raised the very same issue before this Court by filing a writ petition in W.P.No.10123 of 2022. A learned Single Judge of this Court dismissed the said writ petition as not maintainable by his order dated 26.04.2022 on the ground that the petitioner ought to have exercised the alternate statutory appellate remedy as against the assessment order and without exercising the same, the petitioner has directly approached this Court under Article 226 of the Constitution of India.

b) Aggrieved by the aforesaid order of the learned Single Judge, the petitioner had filed a writ appeal before a Division Bench of this Court in W.A.No.1879 of 2022. By an interim order dated 22.09.2022 in W.A.No.1879 of 2022 and C.M.P.No.13782 of 2022, the Division Bench had granted interim stay of all further proceedings with regard to the assessment order till 31.10.2022, which was extended until further orders by order dated 05.12.2022.

6. In view of the fact that the petitioner is one and the same and the very same issue was raised in respect to another assessment year, as is being raised in this writ petition, this Court is of the considered view that the petitioner will have to necessarily approach the Division Bench for obtaining suitable orders in its favour and this Court does not have the power to entertain this writ petition.

7. Only on the aforesaid ground, without going into the merits of the petitioner's contentions, this Court is of the considered view that the present writ petition is not maintainable. Accordingly, this writ petition is dismissed. No costs. Consequently, W.M.P.Nos.1923 and 1925 of 2023 are also dismissed.

24.01.2023

Index : Yes/No

Speaking/non-speaking order

Note: Upload the order forthwith.
Issue order copy on 24.01.2023

sra

Abdul Quddhose, J.

(sra)

To

1. Assessment Unit,
   Income Tax Department.

2. The Deputy Commissioner of Income Tax,
   Corporate Circle-3(1),
   121, Mahatma Gandhi Road,
   Chennai 600 034.

W.P.No.1807 of 2023

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