IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.11.2023

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THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P. No.41845 of 2016 and
W.M.P. No.35810 of 2016 and 17956 of 2022

M/s.Durr India Private Limited
Represented by its Director Mr.Micheal Berger,
No.471, 2nd Floor, Prestige Polygon,
Anna Salai, Nandanam,
Chennai 600 035. .. Petitioner

Vs.

1. Assistant Commissioner of Income Tax (OSD)
   Corporate Range-1,
   121, Mahatma Gandhi Road,
   Nungambakkam, Chennai 600 034.

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

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari to call for the records on the file of the First Respondent and quash the impugned order in PAN:AAACD3568P/2009-10 dated 25.10.2016 along with the notice issued by the Second Respondent under Section 148 of the Income Tax Act, 1961 in PAN:AAACD3568P dated 31.03.2016.

For Petitioner : Mr.N.V.Balaji

For Respondents : Mr.D.Prabhu Mukunth Arunkumar
Junior Standing Counsel

ORDER

The short question that arises for consideration is whether the assumption of jurisdiction under Section 147 of the Income Tax Act, 1961 (hereinafter referred to as "the Act") invoking the extended period in the absence of a finding that income chargeable to tax has escaped assessment by reason of failure on the part of the assessee to fully and truly disclose material particulars necessary for assessment would vitiate the proceedings.

2. It is submitted by the learned counsel for the petitioner that the issue stands resolved by a judgment of the Division Bench of this Court in W.A.Nos.1081 and 1083 of 2021.

3. To the contrary, it was submitted by the learned counsel for the respondent that a SLP has been preferred and Diary No.18959 of 2019 is also circulated. However, the Apex court had held that in the absence of stay the matters shall be decided on the basis of the law as it stands.

4. In this regard, it may be useful to refer to the judgment of the Hon'ble Supreme Court in the case of *Union Territory of Ladakh & ORS. v. Jammu and Kashmir National Conference & ANR.,* in Civil Appeal No.5707 of 2023 dated 06.09.2023 wherein it has been held that Court shall not defer the hearing only on the ground that a reference/review is filed before the Hon'ble Supreme Court. The relevant portion of the judgment is extracted here under:

> *"35....In this regard, we lay down the position in law. We make it absolutely clear that the High Courts will proceed to decide matters on the basis of the law as it stands. It is not open, unless specifically directed by this Court, to await an outcome of a reference or a review petition, as the case may be. It is also not open to a High Court to refuse to follow a judgment by stating that it has been doubted by a later Coordinate Bench.* "

5. In view of the above judgment, I am inclined to set aside the impugned proceedings. The writ petitions stand disposed of. No Costs. Consequently, connected miscellaneous petitions are closed.

22.11.2023

Speaking (or) Non Speaking Order
Index:Yes/No
Neutral Citation: Yes/No
Spp

MOHAMMED SHAFFIQ, J.

Spp

To:

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