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W.P.Nos.17864, 18313 and 20150 of



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.09.2023

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THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P.Nos.17864, 18313 and 20150 of 2021

and

W.M.P.Nos.19536, 21423, 19069 and 21422 of 2021

BMN Steels Emporium (Chennai)
5, Menambedu Road,
SIDCO Industrial Estate, Ambattur,
Chennai 600 098.

... Petitioner in all petitions

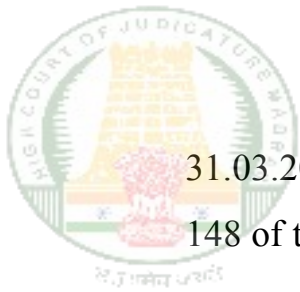
v.

The Deputy Commissioner of Income Tax,
Central Circle 1(3),
No.46 (Old No.108), Mahatma Gandhi Road,
Chennai 600 034.

... Respondent in all petitions

Prayer in W.P.No.17864 of 2021: Writ Petition is filed under Article 226 of the Constitution of India, praying to issue a writ of Certiorari calling for the records in Notice No.ITBA/AST/S/148/2020-21/1032095963(1) dated 31.03.2021 PAN No.AAIFB0783D on the file of the respondent under Section 148 of the Income Tax Act and quash the same.

Prayer in W.P.No.18313 of 2021: Writ Petition is filed under Article 226 of the Constitution of India, praying to issue a writ of Certiorari calling for the records in Notice No.ITBA/AST/S/148/2020-21/1032095963(1) dated



31.03.2021 PAN No.AAIFB0783D on the file of the respondent under Section 148 of the Income Tax Act and quash the same.

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Prayer in W.P.No.20150 of 2021: Writ Petition is filed under Article 226 of the Constitution of India, praying to issue a writ of Certiorari calling for the records in Notice No.ITBA/AST/S/148/2020-21/1032095978(1) dated 31.03.2021 PAN No.AAIFB0783D on the file of the respondent under Section 148 of the Income Tax Act and quash the same.

For Petitioner in all petitions : Mr.Ashokapathy for
M/s Pass Associates

For Respondent in all petitions : Mr.A.P.Srinivas,
Senior Standing Counsel

COMMON ORDER

The three writ petitions are filed challenging the impugned notices for the assessment years 2015-16, 2016-17 and 2017-18.

2. The short question that arises for consideration is whether the impugned assessment proceeding made solely on the basis of the statement obtained from the petitioner during the course of survey under Section 133A of the Income Tax Act, 1961 (hereinafter referred to as “IT Act”) can be sustained.



3. Before I proceed further, it may be relevant to set out the facts very briefly:

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3.1. The petitioner is a company engaged in the business of trading of carbon and alloy steel iron bars. During the relevant assessment years, the petitioner had filed its return in terms of the IT Act. Survey under Section 133A of the IT Act, was conducted on the premises of the petitioner on 08.03.2019 and statements were obtained during the said survey wherein the petitioner had offered a low net profit percentage @ 1.09 % as against net profit percentage of 3 % (mistakenly mentioned as 5%) offered by others in the same line of business. The assessee vide letter dated 05.04.2019 retracted the above statement recorded on 08.03.2019.

3.2. On the basis of the said statement, notices were issued under Section 148 of the IT Act on 31.03.2021, to which, the petitioner submitted its objection *interalia* raising the issue of jurisdiction of the assessing authority to issue notices solely on the basis of statement obtained under Section 133A of the IT Act. However, the objections came to be rejected vide order dated 19.07.2021.

4. It is submitted by the learned counsel for the petitioner that the impugned notices under Section 148 dated 31.03.2021 are challenged on the



basis that statement under Section 133A of the Act, cannot be the sole basis for making assessment. In this regard, reliance was sought to be placed on the following judgment of this Court in *Commissioner of Income Tax v. S.Khader Khan Son* reported in, (2008) 214 CTR 0589:

“7. From the foregoing discussion, the following principles can be culled out:-

(i) An admission is extremely an important piece of evidence but it cannot be said that it is conclusive and it is open to the person who made the admission to show that it is incorrect and that the assessee should be given a proper opportunity to show that the books of accounts do not correctly disclose the correct state of facts, vide decision of the Apex Court in Pullangode Rubber Produce Co. Ltd. v. State of Kerala [(1973) 91 I.T.R. 18];

(ii) In contradistinction to the power under section 133A, section 132(4) of the Income-tax Act enables the authorised officer to examine a person on oath and any statement made by such person during such examination can also be used in evidence under the Income-tax Act. On the other hand, whatever statement is recorded under section 133A of the Income-tax Act it is not given any evidentiary value obviously for the reason that the officer is not authorised to administer oath and to take any sworn statement which alone has evidentiary value as contemplated under law, vide Paul Mathews and Sons v. Commissioner of Income-tax [(2003) 263 I.T.R. 101]”

5. It is submitted that SLP filed against the above order was also stands dismissed. The order of the Division Bench of this Court is followed by another Single Judge of this Court in W.P.Nos.21919 to 21921 of 2018 dated 25.02.2019 reported in (2019) 417 ITR 0050 (Mad). It was further submitted



that there is a circular which would also indicate that the assessing authority has been directed to gather evidence and to avoid admission of undisclosed income under coercion.

6. To the contrary, it was submitted by the learned counsel for the respondent that the petitioner can possibly raise all its objection in respect of issuance of show cause notice before completion of assessment.

7. Heard both sides. Perused the material on record.

8. This Court finds that there is merit in the submission made by the learned counsel for the respondent that the writ petitions at this stage is premature and thus ought not to be entertained. It is open to the petitioner to raise all its objection and place reliance on the judgment referred and circular before the assessing authority who shall consider the same while passing the orders of assessment. It is made clear that while completing the assessment, the assessing authority shall afford reasonable opportunity in accordance with law. Needless to state that if the petitioner were to raise the jurisdiction of the assessing officer to make assessment solely on the basis of statement obtained under Section 133A of the IT Act, the same would be dealt with.



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9. With the above direction, the writ petitions stands disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

15.09.2023

Index: Yes/No

Internet: Yes/No

Speaking order / Non speaking order
shk



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To

The Deputy Commissioner of Income Tax,
Central Circle 1(3),
No.46 (Old No.108), Mahatma Gandhi Road,
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MOHAMMED SHAFFIQ,J.
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