IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.08.2023

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THE HONOURABLE MR.JUSTICE **C.SARAVANAN**

W.P.No.22889 of 2021
and
W.M.P.Nos.24093 of 2021 and 2671 of 2022

Kumaran Silks Traders,
Rep by its Partner,
P.J.Ethiraj, S/o.P.C.Jayaraman
aged 59 years,
No.61, Usman Road,
T.Nagar, Chennai – 600 017. ... Petitioner

Vs

1.The Income Tax Officer,
National Faceless Assessment Centre,
Income Tax Department,
Ministry of Finance,
Room No401, 2nd Floor, E-Ramp,
Jawaharlal Nehru Stadium,
Delhi – 110 003.

2.The Income Tax Officer,
Non-Corporate Ward-1(2),
Wanaparthy Block, 3rd Floor,
Aayakar Bhavan, No.121, M.G.Road,
Nungambakkam, Chennai – 600 034. ... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, to call for the records in DIN:ITBA/AST/S/143(3)/2021-22/1036035149(1) dated 27.09.2021 on the file of the 1st respondent relating to A.Y.2018-19 and quash the same.

For Petitioner : Mr.R.Sandeep Bagmar

For Respondents : Mr.B.Ramana Kumar
Senior Standing Counsel

ORDER

This the second round of litigation before this Court.

2.The petitioner is aggrieved by the impugned Assessment order dated 27.09.2021 passed by the first respondent pursuant to an earlier order of this Court dated 28.04.2021, whereby, the earlier Assessment order passed on 15.04.2021 was quashed and the case was remitted back to the respondents to redo the assessment afresh. The aforesaid Assessment preceded a Show Cause Notice dated 12.04.2021. After the Assessment order dated 15.04.2021 was set aside, series of communications were exchanged between the petitioner and the Department. Finally the petitioner was issued with a Show Cause Notice dated 16.09.2021 to which the petitioner replied on 23.09.2021. The respondents have also given the petitioner to appear for a personal hearing through Video conferencing.

3.The specific case of the petitioner is that the respondents have dis-believed the cash deposit of Rs.10,73,50,000/-. The further specific case of the petitioner is that the petitioner has a showroom in T.Nagar, where, the customers purchase sarees mostly in cash and that the sales proceeds are accounted properly and deposited into the petitioner's bank Account.

4.The learned counsel for the petitioner would submit that the impugned Assessment pertains to the Financial year 2017-2018 and that during that a period part of the Assessment was under the TNVAT Act, 2006 up to 30.06.2017 and thereafter from 01.07.2017 upto 31.03.2018 under the GST enactments.

5.It is the specific case of the petitioner is that the petitioner has paid a sum of Rs.65,79,727/- as tax on the sale made by the petitioner under the provisions of the CGST Act, 2017 and TNGST Act, 2017 and under the provisions of the Integrated Goods and Services Act, 2017.

6.It is submitted that the basis on which, the respondents have dis-believed the sale consideration amounting to Rs.10,73,50,000/- without any basis to conclude that there was un-explaind income in the hands of the petitioner under Section 68 of the Income Tax Act was unsustainable. It is further submitted that the Department had issued notices to various suppliers and only 10 of the suppliers have been confirmed having sold the textile goods to to the petitioner.

7.However, this would not *Ipso facto* mean that the balance sale consideration of Rs.10,73,50,000/- deposited into the petitioner's account was un-explained income in the hands of the petitioner.

8.The learned counsel for the petitioner has drawn attention to the profit and loss account filed along with the returns dated 03.09.2018.

The learned counsel for the petitioner would further submits that during the period in dispute, the petitioner has purchased textile goods for a sum of Rs.12,87,75,867/- and had made sale for Rs.17,26,82,896/- and after deducting various expenses and after depreciation, the petitioner had declared a taxable income of Rs.5,76,299/- and has paid tax.

9.It is submitted that the petitioner had also attempted to share the screenshot of the shop and the nature of business where there are cash transaction. However, the petitioner was unable to upload the same That apart, it is submitted that the respondents should have made physical verification by making a physical visit to the show room of the petitioner to verify the volume of cash sales. It is submitted that atleast, the respondents could have called for a verification report after proper inspection.

10.He further submitted that the petitioner has been existence since 1990 and has been regularly filing Income Tax returns. It is submitted that the bulk of the petitioner's income was from cash sales made to the customers or by debit or credit cards. It is submitted that cash sales is properly accounted for and paid to the account. It is therefore submitted that the impugned order is not sustainable.

11.It is further submitted that the petitioner had uploaded 117 documents which were not considered by the respondents while passing the impugned order.

12.On the other hand would submit that the respondents have merely reiterated the draft Assessment order which was forwarded to the petitioner along with the Show Cause Notice on 16.09.2021.

13.The learned Senior Standing Counsel for the respondents submits that the present writ petition is devoid of merits. It is submitted that the petitioner is arguing the case on merits. It is further submitted that there are several disputed question of fact and therefore the petitioner should advised to file a statutory appeal before the Appellate Commissioner.

14.It is further submitted that the earlier Show Cause Notice was issued on 12.04.2021 which had culminated in an Assessment order dated 15.04.2021. It is submitted that the difference in the amounts declared in the Income Tax Returns and in the GST returns filed under the GST and VAT returns were huge. It is therefore submitted that the petitioner should have asked to work out the remedy against the impugned Assessment order before the Appellate Commissioner.

15.I have considered the arguments advanced by the learned counsel for the petitioner and the learned Senior Standing Counsel for the respondents and also perused the documents filed by the petitioner.

16.The respondents have added a sum of Rs.10,73,50,000/- as un-explained income in the hands of the petitioner under Section 68 of the Income Tax Act, 1961. Consequently, the petitioner has also been mulct with tax at the rate of 60% under section 15(b)(h)(e) of the Income Tax Act, 1961. The Department has issued notices to the some of the suppliers. Only 10 suppliers have responded to the Department confirming the sales to the petitioner.

17.The Department ought to have verified the bank statement and verified whether there were any unusual deposits of cash during the period in dispute as compared to the past and to come to a just conclusion as to whether there was any deposit of un-explained income. The Department also should have deputed an officer from its verification unit to ascertain whether the petitioner's business was involves heavy cash transactions and through credit and debit cards.

18.More importantly, the Department should have compared the returns filed by the petitioner under the provisions of the TNVAT Act, 2006 and under the respective GST enactments and ascertained whether there were sales for the value of Rs.17,26,82,896/- during the period in dispute.

19.Under these circumstances, Court is inclined to interfere with the impugned order and quashes it and remits the case back to the respondents to pass a fresh order on merits and in accordance with law within a period of six months from the date of receipt of a copy of this order.

20.Before proceeding further, the second respondent is directed to depute an officer from its Verification Unit to make a visit to the petitioner's Showroom and to give a report regarding the nature of the business of the petitioner. The first respondent shall also compare the past returns filed to ascertain whether there was any unusual deposit of unexplained income under Section 68 of the Income Tax Act, 1961. Entire exercise shall be carried out in six month from the date of receipt of a copy of this order.

21.This writ petition stands allowed. No costs. Consequently, connected writ miscellaneous petitions are closed.

29.08.2023

Index: Yes/ No
Internet : Yes/No
Speaking/Non-speaking Order
Neutral Citation : Yes/No
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C.SARAVANAN,J.

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