IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 22.08.2023

CORAM:

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.No.24741 of 2023
and
W.M.P.Nos.24182 and 24183 of 2023

B.Somasundaram ... Petitioner

vs.

The Joint Commissioner of Income Tax,
Central Circle, Central Range,
63, Race Course Road,
Coimbatore - 641 018. ... Respondent

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, seeking to issue a Writ of Certiorari of any other appropriate Writ Order or Direction, calling for the records relating to Notice issued in DIN & Notice No.ITBA/PNL/S/271D/2022-23/1050219037(1) dated 28.02.2023, and consequential notice in DIN & Letter No.ITBA/PNL/F/17/2023-24/1055002549(1) dated 09.08.2023, on the file of the respondent and quash the same.

For Petitioner : Mr.Niranjan Rajagopalan

For Respondent : Mr.A.N.R.Jayaprathap
Senior Standing Counsel

ORDER

Mr.A.N.R.Jayaprathap, learned Senior Standing Counsel takes notice on behalf of the respondent.

2. The petitioner has challenged the impugned notice issued under Section 271D of the Income Tax Act, 1961. The impugned Show Cause Notice has been issued to the petitioner for violation of Section 269SS of the Income Tax Act, 1961.

3. It is the specific case of the petitioner is that the notice is vague and that already a regular Assessment order has been passed on 31.12.2019, wherein, proposals were made for imposing penalty under Sections 270A, 271A, 271B and 271AAC of the Income Tax Act, 1961. It is submitted that the petitioner is in appeal, asfar as the Assessment order dated 31.12.219 is concerned.

4. It is further submitted that the Assessment order dated 31.12.2019 was later revised by invoking provisions of Section 148 of the Income Tax Act, 1961 and another Assessment order has been passed on 20.03.2022, wherein, there is no proposal for imposing any penalty on the petitioner. It is further submitted that since the notice is vague, questioning of proposing imposition of penalty under section 271D of the Income Tax Act, 1961 is without any merits.

5. The learned counsel for the petitioner has relied on the following decisions:-

(i)***Commissioner of Income Tax*** Vs. ***Jaya Lakshmi Rice Mills, Ambala City*** reported in (2015) 64 Taxmann.com 75 (SC);

(ii)***Commissioner of Income Tax*** Vs. ***Standard Brands*** reported in [2006] 285 ITR 295 (Delhi);

(iii)***Diwan Enterprises*** Vs. ***Commissioner of Income Tax*** reported in [2000] 246 ITR 571 (Delhi);

(iv)***Director of Income-Tax (Exemptions), Chennai*** Vs. ***Young Men Christian Association*** reported in [2014] 227 Taxman 31 (Madras) and

(v)***Srinivasa Reddy Reddeppagari*** Vs. ***Joint***

Commissioner of Income Tax in W.P.No.44285 of 2022 (Telangana High Court).

6. I have considered the arguments advanced by the learned counsel for the petitioner and the learned Senior Standing Counsel for the respondent.

7. Show cause proceeding cannot be scuttled by filing a writ petition, as it is not without jurisdiction. It is open for the petitioner to reply to the Show Cause Notice and defend himself. P*rima facie,* it appears that the petitioner has violated provisions of Section 269SS of the Income Tax Act, 1961 and is therefore required to answer to the proposal contained the impugned Show Cause Notice dated 09.08.2023. Therefore, this writ petition is liable to be dismissed. The petitioner shall file such reply within one week from the date of receipt of a copy of this order. The respondent shall therefore dispose the impugned Show Cause Notice dated 09.08.2023 on merits and in accordance with law without getting influenced by any of the observations contained herein in this order within reasonable period.

8. This writ petition stands dismissed with the above observations. No costs. Consequently, connected writ miscellaneous petitions are closed.

22.08.2023

Index:Yes/No
Internet:Yes/No
Speaking/Non-speaking Order
Neutral Citation : Yes/No
jas/ssa

To

The Joint Commissioner of Income Tax,
Central Circle,Central Range,
63,Race Course Road,
Coimbatore-641 018.

<u>C.SARAVANAN, J.</u>

jas/ssa

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<u>and</u>
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