IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.08.2023

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

W.P.No.29242 of 2022
and
W.M.P.No.28537 of 2022

M/s.Smart Furniture,
Represented by its Partner,
Mr.S.Ahilan Anand,
2/194, Mudichur Road,
Mannivakkam,
Kanchipuram – 600 048. ... Petitioner

Vs

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

Prayer: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, to call for the records pertaining to the impugned assessment order dated 29.09.2022 bearing DIN and Order No.ITBA/AST/S/143(3)/2022-23/1046123467(1) purportedly passed under Section 143(3) of the Income Tax Act, 1961 for the Assessment Year 2020-21, by the respondent and quash the same.

For Petitioner : M/s.T.V.Muthu Abirami

For Respondents : Mr.A.P.Srinivas
Senior Standing Counsel

ORDER

The petitioner is aggrieved by the impugned Assessment order dated 29.09.2022 for the Assessment year 2020-2021. By the impugned order, the Assessing Officer has arrived at the NET Stock value of the petitioner from un-explained source of income at Rs.3,10,20,813/-.

2. A survey was conducted on 27.02.2020, wherein, several discrepancies were found in the method of account followed by the petitioner. The petitioner later finalised the books of accounts and prepared balance sheet of profit and loss account.

3. The petitioner thereafter filed return of income under Section 139(1) on 19.01.2021. During Assessment of the return filed by the petitioner, two notices were issued to the petitioner on 02.08.2022 and 16.08.2022.

4. It is the specific case of the petitioner is that the respondent Assessing Officer had accepted the reply to Notice dated 02.08.2022 and 05.08.2022 and that the subsequent Show Cause Notice dated 16.08.2022. Having accepted the reply, the petitioner was to called upon to furnish further explanation in respect of the difference of Rs.29,36,013/- (Rs.3,31,79,281 – Rs.3,02,43,268) only.

5. It is therefore submitted that having accepted, the difference as only Rs.29,36,013/-, addition of a sum of Rs.3,10,20,813/- to the income of the petitioner from unexplained sources was in gross violation of principles of natural justice. It is therefore submitted that the impugned order is arbitrary and is therefore liable to be quashed.

6. In this connection, the learned counsel for the petitioner has drawn attention to a decision of the Andhra Pradesh High Court in the case of ***Principal Commissioner of Income-tax*** Vs. ***Deccan Jewellera (P.) Ltd*** reported in [2021] 132 taxmann.con 73.

7. It is submitted that the impugned order is liable to be set aside and the case be remitted back to the respondent for pass a fresh order.

8. Defending the impugned order, the learned Senior Standing Counsel for the respondent submits that the impugned second Show Cause Notice dated 16.08.2022 cannot be construed to be a final determination of the difference in the stock and/or acceptance of the explanation given by the petitioner on 05.08.2022 to Show Cause Notice dated 02.08.2022.

9. It is further submitted that the petitioner's reply dated 05.08.2022 was found unsatisfactory and therefore the petitioner was called upon to explain the difference arrived for a sum of Rs.29,36,013/-. It did not however mean that there was a acceptance of the reply given by the petitioner to the fresh Show Cause Notice dated 02.08.2022.

10. I have considered the arguments advanced by the learned

counsel for the petitioner and the learned Senior Standing Counsel for the respondent and also perused the Show Cause Notice dated 02.08.2022 and 16.08.2022 and the reply dated 05.08.2022 and 18.08.2022 and also perused the return of income filed by the petitioner on 19.01.2022 and the statement of books of acccounts filed by the petitioner along with returns.

11. The dispute pertains un-explained stock found during survey held on 27.02.2020. The correctness of the amount arrived is a matter of assessment and therefore the petitioner should have filed a Statutory Appeal before the Appellate Commissioner against the impugned Assessment Order. It would be improper for the Court to get into the accounting method adopted touching on the merits by over looking the Appellate remedy available to the petitioner before the Appellate Commissioner and thereafter before the Appellate Tribunal.

12. Under Article 226 of the Constitution of India, the Court is not expected to look into the merits of the case to decide on the correctness of the decision in impugned order. This Court is merely concerned with

the procedure and decision making process adopted before passing of the impugned order. This Court is not concerned with the decision arrived in the impugned order.

13. No case made out for interfering with the impugned Assessment order in this Writ Petition. Liberty is however given to the petitioner to file a Statutory Appeal before the Appellate Authority within a period of 60 days from the date of receipt of a copy of this order. All recovery proceedings shall be kept in abeyance within a period of 30 days from today, subject to the petitioner filing an Appeal within such time, the petitioner is at liberty and also ask for interim relief either before the respondent nor before the Appellate Commissioner under the scheme of the Income Tax Act, 1961.

14. This writ petition stands disposed of with the above observations. No costs. Consequently, connected writ miscellaneous petition is closed.

21.08.2023

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

The Deputy Commissioner of Income Tax,
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Investigation Building,
No.46(Old No.108),
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Chennai – 600 034.

C.SARAVANAN,J.

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