IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 19.10.2023

CORAM

THE HON'BLE Mr. JUSTICE KRISHNAN RAMASAMY

W.P.No.30476 of 2023
and W.M.P.Nos.30102 & 30104 of 2023

Sooriya Hospital,
Represented by its Partner,
Dr.C.P.Sreekumar,
1/1, Arunachalam Road,
Saligramam, Chennai – 600 093. ... Petitioner

Vs.

1.The Deputy Commissioner of Income Tax,
TDS Circle 3(1), TDS Range 3,
No.120, BSNL Building, Greams Road,
Chennai – 600 006.

2.The Commissioner of Income Tax (TDS),
No.120, BSNL Building, Greams Road,
Chennai – 600 006, ... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, to call for the entire records of the respondents contained in the email dated 12.10.2023 issued by the 2nd respondent calling the petitioner to show cause under Section 279(1) read with Section 276B(a) of the Income Tax Act, 1961 in the petitioner's case for TAN:CHES15108C for FY 2017-18 and to quash the same as arbitrary, illegal and unjust and to consequently forbear the respondents or its superiors, subordinates, agents etc., from prosecuting the petitioner or any person declared as the petitioner's Principal Officer under Section 276B/276BB of the Income Tax Act, 1961 for belated remittance of Tax deducted at Source (TDS) for FY 2021-22.

For Petitioner	:	Mr.Suhrith Parthasarathy
For Respondent	:	Dr.B.Ramaswamy Senior Standing Counsel

ORDER

Dr.B.Ramaswamy, learned Senior Standing Counsel takes notice for the respondents. By consent of the parties, the main writ petition is taken up for final disposal at the admission stage itself.

2.This writ petition has been filed by the petitioner seeking to call for the entire records of the respondents contained in the email dated 12.10.2023 issued by the 2nd respondent calling the petitioner to show cause under Section 279(1) read with Section 276B(a) of the Income Tax Act, 1961 in the petitioner's case for TAN:CHES15108C for FY 2017-18 and to quash the same as arbitrary, illegal and unjust and to consequently forbear the respondents or its superiors, subordinates, agents etc., from prosecuting the petitioner or any person declared as the petitioner's Principal Officer under Section 276B/276BB of the Income Tax Act, 1961 for belated remittance of Tax deducted at Source (TDS) for FY 2021-22.

3.Learned counsel for the petitioner submitted that the petitioner paid TDS with the delay. However, he had remitted the TDS with the penalty. Subsequently, the petitioner received a notice dated 16.01.2023 from the 1st respondent asking the petitioner to show cause as to why the petitioner should not be prosecuted under Section 276B/276BB of the Income Tax Act, 1961. He further submitted that the criminal proceedings can be initiated when the petitioner failed to remit the TDS. However, in the present case, the entire TDS amount was deposited and therefore, the respondents cannot initiate prosecution against the petitioner.

4.In support of his contention, he produced the judgment of the Jharkhand High Court in the case of ***Dev Multicom Private Limited vs.***

The State of Jharkhand and ors. made in ***Crl.M.P.No.2941 of 2018***, etc dated ***28.02.2022.*** Against the said judgment SLP was preferred in ***S.L.P.No.3073 of 2023*** by the Income Tax Department before the Hon'ble Supreme Court and the same came to be dismissed vide order dated ***20.03.2023***. Relying upon the said judgments, he submitted that the intention of the respondents to prosecute the petitioner is not substantive.

5.On the other hand, Dr.B.Ramaswamy, learned Senior Standing counsel appearing for the respondents would submit that on 03.02.2023, they have asked for certain particulars however, instead of furnishing the same, the petitioner approached this Court to quash the email communication dated 12.10.2023. Learned Senior Standing Counsel further submitted that the 1st respondent had asked to provide certain particulars, after the perusal of the said particulars only they can decide whether the petitioner has to be prosecuted or not.

6.In reply, learned counsel for the petitioner submitted that the petitioner had elaborately sent a reply on 01.02.2023 to the show cause notice dated 16.01.2023. Even after the receipt of the said reply, again the respondents asked for similar particulars once again without disposing of the previous show cause notice, therefore, the present show cause notice is not sustainable in law.

7.On perusal of the records and hearing the submissions made by the learned counsel for the petitioner as well as the learned Senior Standing Counsel for the respondents, it is seen that the challenge in the present case is the email dated 12.10.2023, wherein the 1st respondent called upon the petitioner to show cause as to why the petitioner should not be prosecuted under Section 276B/276BB of the Income Tax Act, 1961 and for provision of personal hearing. According to the petitioner the respondents keep on calling upon the petitioner to furnish the similar particulars which was already furnished on 01.02.2023 for the show cause notice dated 16.01.2023. The 1st respondent supposed to pass orders for the earlier show cause notice, but has sent another notice, which appears to be personal hearing notice in order to provide opportunity to the petitioner and fixed the personal hearing on 30.10.2023 at 12.30 p.m.,

8.In view of the above, the petitioner is directed to appear before the 1st respondent on 30.10.2023 at 12.30 p.m., along with necessary documents and the 1st respondent shall decide the present issue taking into consideration the judgment of the High Court and the Hon'ble Supreme Court which are produced before this Court and pass appropriate orders.

9.With the above directions, this writ petition is disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

19.10.2023
(8/8)

Speaking/Non-speaking order
Index : Yes / No
Neutral Citation : Yes / No
rst

To:

1.The Deputy Commissioner of Income Tax,
TDS Circle 3(1), TDS Range 3,
No.120, BSNL Building, Greams Road,
Chennai – 600 006.

2.The Commissioner of Income Tax (TDS),
No.120, BSNL Building, Greams Road,
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KRISHNAN RAMASAMY.J.,

rst

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<u>and W.M.P.Nos.30102 & 30104 of 2023</u>

<u>19.10.2023</u>
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