IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 19.10.2023

CORAM

THE HON'BLE Mr. JUSTICE KRISHNAN RAMASAMY

W.P.No.30475 of 2023
and W.M.P.Nos.30100 & 30103 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 its notice bearing Communication Reference No.24072023/00017/LP, dated 24.07.2023, issued by the 1st respondent and the consequent email dated 28.09.2023 issued by the 1st respondent in the petitioner's case for TAN:CHES15108C for FY 2021-22 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 its notice bearing Communication Reference No.24072023/00017/LP, dated 24.07.2023, issued by the 1st respondent and the consequent email dated 28.09.2023 issued by the 1st respondent in the petitioner's case for TAN:CHES15108C for FY 2021-22 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 24.07.2023 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 24.07.2023, they have asked for quantum of total amount deposited towards TDS and other particulars however, instead of furnishing the same, the petitioner approached this Court to quash the notice dated 24.07.2023 and the email communication dated 28.07.2023. 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.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 in the present case, the notice under challenge was show cause notice dated 24.07.2023, wherein the 1st respondent had asked for certain particulars from the petitioner. Thereafter, through email dated 28.09.2023, the 1st respondent provided final opportunity to provide with the details by 29.09.2023 at 3.00 p.m., Thereafter, the petitioner had sent a reply through letter on 29.09.2023. However, according to the respondents, the petitioner had not produced the details called upon by the 1st respondent within the time prescribed by the 1st respondent. The petitioner supposed to have provided the particulars claimed by the 1st respondent.

7.Under such circumstances, this Court directs the 1st respondent to provide an opportunity of personal hearing to the petitioner before passing any orders in the present issue. In such case, the petitioner is directed to participate in the personal hearing 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.

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

19.10.2023
(6/8)

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

To:

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No.120, BSNL Building, Greams Road,
Chennai – 600 006.

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No.120, BSNL Building, Greams Road,
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<u>KRISHNAN RAMASAMY.J.,</u>
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