BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 12.09.2023

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THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD).No.16171 of 2023
and
W.M.P.(MD).No.13567 of 2023

Tvl. Vignesh Constructions,
represented by its proprietor: P.Velusamy,
No.B-9/1 2nd Cross, West Extension,
Trichy-18. ... Petitioner

Vs.

1.The Commissioner of
Commercial Taxes,
Ezhilagam, Chepauk,
Chennai.

2.The Assistant Commissioner (ST),
Woraiyur Assessment Circle,
Trichy. ... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, calling for records pertaining to the impugned proceedings passed by the 2nd respondent in TIN: 33303445221/2012-13, dated 26.05.2023 and quash the same as the same is illegal, arbitrary and without jurisdiction as the same is barred by limitation.

For Petitioner : Mr.A.Satheesh Murugan

For Respondents : Mr.R.Suresh Kumar,
Additional Government Pleader

ORDER

This Writ Petitions are filed for Writ of Certiorari, challenging the assessment order, dated 26.05.2023 passed for the assessment year 2012 to 2013.

2. The petitioner is doing construction business in the name and style of "Vignesh Constructions". The said concern is registered under TNVAT Act bearing the TIN No. 33303445221 and the petitioner had regularly filed monthly returns. The contention of the petitioner is that for the assessment years 2012-13 deemed assessment order was passed by accepting the total taxable turnover declared in the returns filed by the writ petitioner and the same was served on the petitioner on 31.12.2013. If at all the respondents intended to pass revision then the respondents ought to have revised on or before 31.10.2019. But the second respondent has passed the revision order on 14.09.2020 which is barred by limitation, since the respondents are having power to revise within a period of six years.

3. But the respondents submitted that revision notice was issued on 24.07.2019 itself which is within the period of limitation. However, the petitioner has not responded to the notice, hence an order was passed on 14.09.2020.

4. It is seen that the respondents claim that the notice was issued on 24.07.2019, but the petitioner claims that the revision notice was issued on 28.07.2020. In the counter the respondent has not denied regarding the notice dated 28.07.2020. Moreover, the respondents have not submitted any evidence to show that the notice was issued on 24.07.2019. Another Learned Single Judge in a similar case in Tvl. Thalayan Motors Vs. the State Tax Officer in W.P.(MD)No.8050 of 2021 batch vide order dated 14.07.2022 has held notice ought to be served properly and the relevant portion is extracted hereunder:

> *5. In this case, the short compass in which the case is to be decided on the point of limitation is whether the notice has been sent through registered post as per Rule 19(c) and whether Section 27 has been complied with. As could be seen, for the assessment year 2010-2011, it should have been done within a period of five years of filing. In this case, the five years' period gets over on 30.06.2018. The first notice, which is said to have sent on 27.02.2018, is by ordinary post. Hence, no cognizance can be taken. Thereafter, the subsequent notices dated 14.12.2020 and 16.02.2021 had been sent by RPAD.*

> *6. This service of notice is beyond the period of limitation as contemplated under Section 27 of the Act. Therefore, the respondent cannot reopen the case beyond the period of five years stipulated under Section 27 and no orders can been passed thereafter. In view of the same, the impugned orders are quashed.*

5. Even in the present case the respondents have not stated that the notice was served on the petitioner on 24.07.2019. Moreover, when the petitioner has taken specific stand that the notice was issued on 28.07.2020, the respondent have not denied the said plea, rather the counter is silent on the said plea. Therefore this Court is of the considered opinion that the notice was served on the petitioner on 28.07.2020 only and the same is beyond the period of limitation.

6. Further, it is seen from the counter that in the present case the revision of assessment has been passed on the ground that the difference between gross profit earned 38.37% as per accounts, but on verification it was found earned gross profit 38.87% hence the respondents have passed the revised assessment order and the difference is only 0.5%. The revision assessment is based on the best judgment assessment. In the same writ petitioner's case in W.P.(MD)No. 16172 and 16173 of 2023 this Court has elaborately dealt with regarding the

best judgment assessment and has held,

> “*8.… The best judgment assessment cannot be a wild guess but a reasonable and justifiable guess at least based on some material. In the present case the respondents have not found any such evidence. It is only on the general impression the books of account was rejected and the taxable turnover was determined at best of judgment basis. Even for adopting some percent as the normal gross profit for such transaction, there is no evidence. As stated in the aforesaid said judgment the Courts have repeatedly pointed out that even a best judgment assessment cannot be a wild guess but a reasonable and justifiable guess based on some material at least. In the present case there is absolutely no material for an addition of 54.91% along with 15% turnover. Therefore, this Court is of the considered opinion, that the impugned order cannot be sustained. Even though it is based on the deemed assessment, the respondents ought to have applied reasonable addition based on the real evidence. Therefore, this Court is of the considered opinion the impugned order is liable to be quashed.*

Applying the said dictum this Court is of the considered opinion that there is no evidence to added 38.87%. Moreover the difference is 0.5% only. Hence on merits also the addition has no real evidence and the difference is negligible and hence this Court is inclined to quash the impugned order and accordingly quashed.

7. For the reasons stated supra, the writ petition is allowed. No costs. Consequently the miscellaneous petitions are closed.

12.09.2023

NCC : Yes/No
Index : Yes / No
Internet : Yes/ No

Sml

To

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Ezhilagam, Chepauk,
Chennai.

2.The Assistant Commissioner (ST),
Woraiyur Assessment Circle,
Trichy.

S.SRIMATHY, J.

Sml

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