IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:**29.01.2024**

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THE HONOURABLE **MR.JUSTICE SENTHILKUMAR RAMAMOORTHY**

Writ Petition No.1664 of 2024
and W.M.P.Nos.1698 & 1699 of 2024

M/s.New Arcot Plywoods and Glasses
Represented by its Partner,
Sri Shanmugasundaram Ravichandran,
No.30, Gopal Naidu Street,
Walajabath, Kanchipuram Taluk,
Kanchipuram District-631 605. ... Petitioner

-vs-

The Deputy Commissioner of Income Tax,
Central Circle 2(3),
Chennai. ... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari calling for the records of the respondent in DIN & Notice No.ITBA/AST/S/148_1/2023-2024/1058803619(1) PAN AALFN4448A, dated 15.12.2023 and quash the same.

For Petitioner : Mr.B.Raveendran

For Respondent : Mr.A.P.Srinivas, Senior Standing Counsel

ORDER

The petitioner challenges a notice issued under Section 148 of the Income Tax Act, 1961 (the Income Tax Act). The petitioner is a partner of a partnership firm carrying on the business of dealing in plywood and glass products. In respect of the assessment year 2019-2020, proceedings in respect of alleged escaped assessment were initiated by issuing a notice under Section 148A(b) and order under clause (d) thereof. The petitioner submitted a reply to the order under Section 148A(d) on 21.11.2023. Eventually, the impugned notice under Section 148 was issued on 15.12.2023.

2. Learned counsel for the petitioner challenges such notice on the ground that the notice was issued on the basis of a statement recorded under Section 133A of the Income Tax Act. By relying on the judgment of the Division Bench of this Court in *Commissioner of Income Tax, Salem v. S.Khader Khan Son (Khader Khan), Manu/TN/8897/2007*, learned counsel

contends that a statement under Section 133A of the Income Tax Act cannot be relied upon as evidence. Therefore, he submits that the impugned notice is vitiated and warrants interference.

3. Mr.A.P.Srinivas, learned Senior Standing Counsel, accepts notice on behalf of the respondent. He submits that the notice under Section 148 was issued on the basis of a survey initiated under Section 133A. By referring to the impugned notice, he points out that several facts were unearthed in course of such survey. By way of elucidation, he points out that it was found that sales made in cash were not reflected in the books of account; that there was excess stock of the value of Rs.12,70,087/-; that an immovable property was purchased by one of the partners, Mr.S.Ravichandran, and that a sum of Rs.9,74,500/- was sourced for such property purchase from undisclosed profits earned by the firm. Mr.A.P.Srinivas submits that the assessing officer concluded that there was escaped assessment by taking into account the aforesaid. He also submits that the assessee was provided the information flagged by CBDT, the sworn statement of Mr.S.Ravichandran and inventory of stock and was permitted to

respond thereto.

4. As regards the contention that the statement under Section 133A does not have evidentiary value, he referred to paragraphs 13.2.2, 13.2.3 and 13.3.2 of the impugned notice and pointed out that a statement was also recorded under Section 131 of the Income Tax Act and that Section 131 confers the powers of a civil court on the officer. Therefore, he submits that no interference is warranted and that it was a fit case for initiation of proceedings for escaped assessment.

5. The challenge by the petitioner to the notice under Section 148 is founded entirely on the ground that such proceedings cannot be based on a statement recorded under Section 133A. For such purpose, the judgment of the Division Bench in *Khader Khan* was relied on. In the said judgment, the Division Bench compared and contrasted Sections 132(4) and 133A and concluded that Section 133A does not empower the officer conducting the survey to record statements under oath. On that basis, it was further concluded that such statement does not have evidentiary value.

6. On examining the impugned notice, it is clear that a survey was

conducted and that several factual findings were made on such basis. These findings *inter alia* relate to sales in cash which were not reflected in the books of account, availability of undisclosed or excess stock; and payment for a property being made partly from undisclosed profits. In paragraph 13.2.3 of the impugned notice, it is recorded that the statement of Sri.S.Ravichandran was not the only basis for initiating proceedings under Section 148A, and that such proceedings were initiated on the basis of the entire set of findings arising from the survey.

7. In the impugned notice, it is further recorded that a statement was recorded not only under Section 133A, but also under Section 131 of the Income Tax Act. Section 131, on a plain reading, confers the powers of a civil court on the relevant officers. Such powers include the power to examine even a third party under oath.

8. The above discussion leads to the conclusion that no case is made out to interfere with proceedings initiated by the respondent for alleged escaped assessment. It is needless to say, however, that it is open to the

petitioner to participate in such proceedings and resist any liability in respect of such escaped assessment.

9. W.P.No.1664 of 2024 is disposed of with the observation set out above. There will be no order as to costs. Consequently, connected miscellaneous petitions are closed.

29.01.2024

Index : Yes / No
Internet : Yes / No
Neutral Citation: Yes / No

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To

The Deputy Commissioner of Income Tax,
Central Circle 2(3),
Chennai.

SENTHILKUMAR RAMAMOORTHY,J

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