IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :16.08.2024

Coram

The Honourable **Mr.Justice Krishnan Ramasamy**

W.P.No.4680 of 2024
and
W.M.P.Nos.5108 & 5109 of 2024

Absolute Homes Pvt. Ltd.,
rep. By its Director,
Mr.Ashish Thadani
No.2A,Ranjith Road,
Chitra Nagar, Koturpuram,
Chennai – 600 085.
. ...Petitioner

Vs.

The Income Tax Officer TDS 1(3),
Income Tax Department,
No.120, BSNL Building,
Greams Road, Chennai – 600 006. ...Respondent

Prayer :-

Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus to call for record of the notice bearing Communication Reference No.R2, dated 05.01.2024, issued by the respondent in petitioner's case for TAN : CHEA12977G as arbitrary and consequently, to forbear the respondent or is superiors, subordinates, agents, ec., 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 2012-13.

For Petitioners : Mr.Suhrith Parthasarathy

For Respondent : Dr.B.Ramasamy
Senior Standing Counsel

Order

By consent, the Writ Petition is taken up for final disposal.

2. The challenge in this Writ Petition is to the Communication Reference No.R2 dated 05.01.2024, issued by the respondent in petitioner's case for TAN : CHEA12977G and to quash the same, and consequently, to forbear the respondent from prosecuting the petitioner under Section 276 B/276BB of the Income Tax Act, 1961, for belated remittance of Tax Deducted at Source (TDS)

3. Mr.Suhrith Parthasarathy, learned counsel appearing for the petitioner would submit that because of the failure on the part of the petitioner to remit TDS in time, though the same has been remitted by the petitioner along with penalty and interest subsequently, the petitioner has been issued with a show cause notice calling for reply, as to why, prosecution cannot be initiated against them for not remitting the TDS in accordance with law; that though the petitioner has filed replies dated 06.10.2023 and 27.10.2023, stating the above details, the respondent, without considering those replies, went on to re-issue the same notice. Therefore, the learned counsel prayed for setting aside the impugned order. and sought for appropriate consequential direction.

4. Per contra, Dr.B.Ramasamy, learned Senior Standing Counsel, who takes notice on behalf of the respondent would submit that it is only a show cause notice, since it is stated by the learned counsel for the petitioner that replies were filed to the show cause notice, based on the such replies, appropriate orders would be passed, therefore, he prayed for dismissal of the Writ Petition.

5. Heard Mr.Suhrith Parthasarathy, learned counsel appearing for the petitioner and Dr.B.Ramasamy, learned Senior Standing Counsel on behalf of the respondent and perused the materials available on record.

6. Initially, a show cause notice was issued on 17.02.2015 to the petitioner; though, according to the petitioner, no such show cause notice was served on the petitioner and it is for the first time, the petitioner has been issued with the show cause notice dated 05.01.2024, and challenging the same, the petitioner is before this Court by way of present Writ Petition on the ground that the same is barred by limitation, since the issue of payment of TDS pertains to the FY 2012-13 and after a lapse of 12 years, the present Show Cause Notice was issued; that it is not the case of the respondent that the petitioner has not at all paid TDS, since TDS was already deposited by the petitioner along with interest and penalty, but, with a delay, therefore, no prosecution can be launched; that setting out such averments, the petitioner has filed detailed replies, however, without considering those replies, the present impugned order came to be passed, considering the fact that the petitioner has filed detailed reply to the show cause notice, it is for the respondent-Department to consider such reply and take appropriate decision in the matter, as to whether they can initiate prosecution or drop the same based on the replies filed by the petitioner, this Court is not inclined to interfere with any of the decision to launch any prosecution by the respondent against the petitioner.

7. Accordingly, the Writ Petition fails and it is dismissed. No costs. Consequently, connected Miscellaneous Petitions are closed.

16.08.2024

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Index : yes/no
Neutral Citation : yes/no

To
The Income Tax Officer TDS 1(3),
Income Tax Department,
No.120, BSNL Building,
Greams Road, Chennai – 600 006.

Krishnan Ramasamy,J.,

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