IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **19.06.2024**

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THE HONOURABLE **MR.JUSTICE SENTHILKUMAR RAMAMOORTHY**

Writ Petition No.15131 of 2024 and
W.M.P.Nos.16450, 16451, 16453, 16455, 16456 & 16458 of 2024

M/s.Kriya Medical Technologies P Ltd.,
Represented by CEO B12 SIPCOT,
Industrial Growth Centre, Mathur Post,
Oragadam Industrial Area,
Kancheepuram, Chennai 602 105
PAN AAECM7957M .. Petitioner

-vs-

1.The Assessment Unit,
Income tax Department,
National e-Assessment Centre,
Delhi E-Ramp, Jawaharlal Nehru Stadium,
Delhi-110 003.

2.The Deputy Commissioner of Income Tax,
Corporate Circle 4(1),
Chennai Income Tax Department,
No.121, Nungambakkam High Road,
Chennai 600 034.

3.The Principal Commissioner of Income Tax-4,
Chennai Income Tax Department,
No.121, Nungambakkam High Road,
Chennai 600 034. ... Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari calling for the records of the Writ Petitioner on the file of the 1st Respondent to quash the impugned order u/s 143(3) read with section 144B of the Income Tax Act, 1961 dated 23.03.2024 in DIN ITBA/AST/S/143(3)/2023-24/1063244026(1) for the Assessment Year 2022-23.

For Petitioner : Mr.A.S.Sriraman

For Respondents : Mr.V.Mahalingam, Senior Standing Counsel
Mrs.S.Premalatha, Junior Standing Counsel

ORDER

An assessment order dated 23.03.2024 is challenged in this writ petition on the ground that the variations were confirmed by non application of mind and without duly taking into consideration the materials placed on record by the petitioner.

2. The petitioner filed the return of income for assessment year 2022-2023 on 31.03.2023. Upon scrutiny of the return, a notice under Section 142(1) of the Income Tax Act, 1961 (the Income Tax Act) was issued on 10.08.2023 calling for the information set out in the annexure thereto. The

petitioner did not reply to such notice. This was followed by several notices under Section 142(1) seeking substantially the same information. By stating that the Chartered Accountant, who had been engaged by the petitioner, was unwell during the relevant period, the petitioner endeavours to justify the failure to reply to these notices. Eventually, show cause notice dated 04.03.2024 was issued proposing three variations in respect of the difference in value of imports over purchases, long term borrowings and income from business. The petitioner replied to such show cause notice on 06.03.2024. A further show cause notice was issued on 16.03.2024 and eventually the impugned order was issued thereafter on 23.03.2024.

3. Learned counsel for the petitioner referred to the reply to the show cause notice dated 04.03.2024 and pointed out that the petitioner explained the difference between the value of imports and value of purchases by stating that the total value of purchases of raw materials was Rs.7.59 crores during the relevant year and this was reflected in the profit and loss account as expenses. As regards the import of capital goods, he pointed out that the petitioner stated that it was accounted for under fixed assets. As regards

long term borrowings, he points out that the petitioner provided the break up details of term loans from banks, compulsorily convertible debentures, external commercial borrowings and loans from directors. By a further reply dated 11.03.2024, learned counsel submitted that several documents such as the balance sheet with schedules, the ledger copies in respect of all imports, statement of sales, copy of cash book, statement of bank accounts, etc. were provided.

4. In spite of providing all these documents, learned counsel for the petitioner submits that the entire differential amount of Rs.4,20,81,933/- between the value of purchases, as per the profit and loss account, and the import value was treated as unexplained expenditure under Section 69C of the Income Tax Act. By referring to the findings with regard to long term borrowings, learned counsel points out that the assessing officer accepted such borrowings to the extent of the term loan of Rs.9,96,60,643/- from the State Bank of India. In spite of recognising that the petitioner had established source of funds at least to this extent, he submits that the difference between the purchase value and import value was added to the

income of the petitioner. Similarly, he submits that there is no basis at all for the estimation of income from business at 12.5% of the turnover of Rs.9,85,24,433/-.

5. Mr.V.Mahalingam, learned senior standing counsel, accepts notice for the respondents. By referring to the series of notices issued under Section 142(1) between 10.08.2023 and 19.02.2024, learned senior standing counsel submits that the petitioner did not respond to any of these notices. He also referred to the documents and information requested for by these notices. He pointed out that the petitioner was called upon to provide financial statements, purchase register, sales register, complete details of long term borrowings, etc. Even after issuance of two show cause notices, learned senior standing counsel submits that the petitioner did not provide all the information requested for from August 2023. In these circumstances, he submits that the conclusions of the assessing officer cannot be faulted. Therefore, learned senior standing counsel submits that no case is made out for interference under Article 226 of the Constitution of India.

6. With regard to the variation in respect of the difference between value of imports over purchases reflected in the profit and loss account, the petitioner's explanation was that the difference of Rs.4,20,81,933/- is on account of import of capital goods and that such import was reflected on the asset side of the balance sheet. The petitioner has provided the balance sheet as an attachment to the reply of 11.03.2024. The balance sheet would contain the value of fixed assets and the notes thereto would provide further details on the nature of fixed assets. In the operative portion of the impugned order, the assessing officer has treated the differential amount of Rs.4,20,81,933/- as unexplained expenditure because the assessee did not furnish further details with regard to imported capital goods. The balance sheet and ledger copies in relation to import of capital goods do not appear to have been duly considered.

7. As regards long term borrowings, the petitioner had provided the break up between term loans from the State Bank of India, compulsorily convertible debentures, external commercial borrowings and loans from directors. Since the financial statements were submitted, the assessing

officer could have examined whether these sources of funds are reflected in such financial statements. Instead, upon confirmation from the State Bank of India in response to a notice under Section 133(6), borrowings to the extent of Rs.9,96,60,643/- were accepted and the remaining borrowings were treated as unexplained cash credit under Section 68 of the Income Tax Act. Learned senior standing counsel is correct in stating that the petitioner failed to provide the list of subscribers to the compulsorily convertible debentures and details about the lender from whom external borrowings were made. However, the basic information, as stated earlier, would be available in the financial statement submitted by the petitioner. The conclusion that income from business is being estimated at 12.5% of the total turnover of Rs.9.85 crores is also not founded on any tenable basis. In these circumstances, it is just and necessary that the petitioner be provided another opportunity to explain these variations. However, by taking note of the fact that the petitioner did not respond to multiple notices under Section 142(1), it is also necessary to impose costs on the petitioner.

8. For reasons set out above, the impugned order dated 23.03.2024 is set aside on condition that the petitioner pays a sum of Rs.50,000/- (Rupees

Fifty thousand only) as costs to the Adyar Cancer Institute, Chennai, within 15 days from the date of receipt of a copy of this order. Within the said period, the petitioner is also permitted to submit all the documents and information called for by the respondents in the notices under Section 142(1) and the show cause notices. In order to enable the petitioner to upload these documents, the respondents are directed to provide access to the portal. Upon receipt of these additional documents from the petitioner, the 1st respondent is directed to provide a reasonable opportunity to the petitioner, including by way of a personal hearing through video-conference, and thereafter issue a fresh assessment order within three months from the date of receipt of additional documents from the petitioner.

9. The writ petition is disposed of on the above terms without any order as to costs. Consequently, connected miscellaneous petitions are closed.

19.06.2024

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