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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.11.2024

CORAM :

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.No.18917 of 2022
and
W.M.P.No.18257 of 2022

M/s.Sicagen India Limited,
Represented by its Director,
4th Floor, SPIC House,
No.88, Mount Road,
Guindy, Chennai – 600 032. ... Petitioner

Vs.

1.The Principal Commissioner of Income Tax,
Chennai – 3,
No.121, Mahatma Gandhi Road,
Nungambakkam, Chennai – 600 034.

2.The Assistant Commissioner of Income Tax,
Corp. Circle 6(2), Chennai,
No.121, Mahatma Gandhi Road,
Nungambakkam, Chennai – 600 034. ... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorarified Mandamus, to call for the records of the first respondent in his proceedings in DIN & Order No.ITBA/REV/F/REV7/2021-2022/1041493035(1), quash the Order dated 25.03.2022 passed therein and further direct the first respondent to consider the revision petition dated 04.12.2020 on merits.

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For Petitioner : Mr.P.V.Sudakar

For Respondents : Mr.V.Mahalingam
Senior Standing Counsel

ORDER

The petitioner is before this Court challenging the Impugned Order dated 25.03.2022 passed by the 1st respondent under Section 264 of the Income Tax Act, 1961.

2. The petitioner has earlier suffered an Assessment Order dated 18.12.2019 which was passed under Section 143(3) of the Income Tax Act, 1961.

3. It appears that both in the regular return filed under Section 139(1) of the Income Tax Act, 1961 on 30.11.2017 and in the revised return under Section 139(5) of the Income Tax Act, 1961 on 06.09.2018, the petitioner had omitted to claim long term capital loss of Rs.10,86,95,652/- on redemption of 25,00,000 cumulative preference shares of face value of Rs.100/- each to the issuing Company namely M/s.Greenstar Fertilizers Limited for a total consideration of Rs.25,00,00,000/-.

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4. It is the case of the petitioner that the failure to avail the long term capital gain of the loss of Rs.10,86,95,652/- was an inadvertent mistake both at the time of filing of return and the revised return under Section 139(1) and Section 139(5) of the Income Tax Act, 1961 on 30.11.2017 and 06.09.2018 respectively.

5. Learned Senior Standing Counsel for the respondents would submit that the Impugned Order dated 25.03.2022 does not call for any interference as the law on the subject is settled by the Hon'ble Supreme Court in **Goetze (India) Limited** Vs. **Commissioner of Income Tax**, [2006] 284 ITR 323 (SC).

6. A specific query as to whether the Court will be dis-empowered to direct the Assessing Officer to examine the same in the light of the decision of the Hon'ble Supreme Court in the above case.

7. The answer forthcoming is that the Court has discretion and therefore there can be a direction to re-examine whether the petitioner can claim long term capital gain of the loss of Rs.10,86,95,652/-.

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8. Incidentally, the Division Bench of this Court has allowed the benefit to an assessee recently in the case of **M/s.Soundaram Chokkanathan Educational and Charitable Trust** Vs. **The Income Tax Officer, Salem** in T.C.A.No.1015 of 2019 dated 09.12.2020.

9. Considering the same, the Impugned Order dated 25.03.2022 is set aside and the matter is remitted back to the respondents to pass fresh order on merits by examining the claim of the petitioner on account of capital gain.

10. This Writ Petition stands allowed with the above observations. No costs. Connected Writ Miscellaneous Petition is closed.

15.11.2024

Index : Yes/No
Internet : Yes/No
Speaking Order/Non-Speaking Order
Neutral Citation : Yes/No

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C.SARAVANAN, J.

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