BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 13.09.2024

CORAM

THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P(MD)No.18759 of 2022
and
W.M.P(MD)Nos.13681, 13683 of 2022, 15514 & 15515 of 2023

Venkatesh Durai Yamuna ... Petitioner

Vs.

1.The Deputy Commissioner of Income Tax,
Circle 1(1), 2nd Floor, Trichy-Main Building,
Williams Road, Cantonment,
Trichy-620 015.

2.The Principal Chief Commissioner of Income Tax,
Tamil Nadu & Puducherry,
Main Building, 121 MG Road,
Nungambakkam,
Chennai-600 034.

3.The Assessment Unit,
National Faceless Assessment Centre,
Income Tax Department,
Ministry of Finance,
Room No.401, 2nd Floor,
E-Ramp, Jawaharlal Nehru Stadium,
Delhi-110 003. ... Respondents

(Third respondent impleaded vide order, dated 13.09.2024 in W.M.P(MD)Nos.15511 & 15513 of 2023 in W.P(MD)No.18759 of 2022)

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, calling for the records in Din - ITBA/AST/S/147/2023-24/1053268323(1), dated 29.05.2023 on the file of the third respondent relating to the assessment year 2013-2014 and quash the same and pass such order or further orders.

(Prayer amended vide order, dated 13.09.2024 in W.M.P(MD)Nos.15511 & 15513 of 2023 in W.P(MD)No.18759 of 2022)

For Petitioner : Mr.G.Baskar

For Respondents : Mr.N.Dilip Kumar

ORDER

The present writ petition is filed challenging the assessment order, dated 29.05.2023 under Section 147 read with Section 144B of the Income Tax Act, 1961, on the premise that there is a gross violation of principles of natural justice.

2. The petitioner is a dealer in automobile spare parts. The petitioner had filed his income tax return disclosing a total turnover of Rs.59,95,365/- for the assessment year 2013-2014. However, a notice was issued under Section 148 of the Income Tax Act, 1961 on 20.05.2022, observing that the petitioner had shown sales turnover for the financial year 2012-2013 to the extent of Rs.1,65,37,297/- and the difference between the turnover reported, viz., Rs.59,95,365/- and Rs.1,65,37,297/- was proposed to be treated as income liable to be taxed at 8% under the Income Tax Act, 1961.

3. It is submitted by the learned Counsel for the petitioner that the petitioner had filed a reply, dated 24.05.2023 wherein, a tabulation of returns filed was made to show that the petitioner had only disclosed the turnover of Rs.59,95,365/- during the relevant assessment year. The relevant portion is extracted hereunder:

> *"I am herewith forwarding the following for your kind consideration and favourable orders:-*
> *I submit that I am a regular assessee assessed to tax in PAN:AAHPY 6197 K. I am having sales tax VAT Registration in TIN:33893522254. I have filed my Return of Income admitting Turnover of Rs.59,95,365/- only. I am herewith forwarding a copy of my VAT return filed during the period as under:*

Month	Taxable
April, 2012 & May, 2012	11,50,234
June, 2012	4,86,114
July, 2012	5,34,181
August, 2012	5,92,616
September, 2012	3,96,337
October, 2012	4,55,445
November, 2012	4,26,440
December, 2012	4,32,226
January, 2013	5,39,682
February, 2013	5,17,318
March, 2013	4,64,772
Total	59,95,365/-

I hereby solemnly affirm that my turnover for the period is Rs.59,95,365/- and the turnover of Rs.1,65,37,297/- is not at all related to my business. You have wrongly mentioned the turnover of Rs.1,65,37,297/- for the Assessment Year 2013-2014."

4. However, on 26.05.2023, the third respondent issued yet another show cause notice calling for the following details to be produced on or before 27.05.2023:

"*1. Details of sales along with copies of bills / vouchers and sale register for FY 2012-13.*

2. Certified copies of all bank account statements in your name and in the name of your concern, SSS Marketing with narration of debit / credit entries for FY 2012-13.

3. Please provide confirmation from M/s.D.J.Automobiles regarding your claim of interest on share capital received by you along with certified bank statements reflecting such transaction with M/s.D.J.Automobiles for FY 2012-13.

4. Please submit certified copy of any agreement with M/s.D.J.Automobiles during the year under consideration.

You are hereby given an opportunity to show cause why proposed variation should not be made and the assessment should not be completed accordingly."

5. It is also submitted by the learned Counsel for the petitioner that since a day time granted to furnish the above detail was inadequate, further time was sought for by the petitioner, to furnish the documents that was sought for by the respondents. However, rejecting the petitioner's request, the impugned order of assessment has been passed. It is further submitted by the learned Counsel for the petitioner that the VAT return would reveal that the sales turnover did not exceed of Rs.59,95,365/- during the relevant year.

6. It is submitted by the learned Counsel for the petitioner that the opportunity to furnish the documents called for vide the subsequent show cause notice, dated 26.05.2023 is illusory and not real and that they may be granted one final opportunity to put-forth his explanation along with relevant documents, to which the learned Standing Counsel for the respondents did not have any objections.

7. This Court is inclined to remand the matter back to the third respondent Assessing Authority and accordingly the matter is remanded back to the Assessing Authority, granting the petitioner one final opportunity to produce the documents, that were sought for vide the subsequent show cause notice, dated 26.05.2023 and to file their objections within a period of four weeks from the date of receipt of a copy of this order. If any such objection is filed / documents furnished, the same shall be considered by the respondents and orders shall be passed on merits and in accordance with law, after affording a reasonable opportunity of hearing to the petitioner. The respondent authority would also ensure that the petitioner can access the web portal to upload the reply and the relevant documents. If the above objections are not filed / documents are not furnished within the stipulated period, i.e., four weeks from

the date of receipt of a copy of this order, the impugned order shall stand revived.

8. The writ petition stands disposed of, accordingly. There shall be no order as to costs. Consequently, connected Miscellaneous Petitions are closed.

13.09.2024

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

To

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MOHAMMED SHAFFIQ, J.

BTR

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