

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On	28.01.2020
Pronounced On	04.02.2020

CORAM

THE HONOURABLE **MR.JUSTICE C.SARAVANAN**

W.P.No.1732 of 2020
and
W.M.P.Nos.2006 & 2007 of 2020

Salem Sree Ramavilas Chit Company,
Private Limited,
Rep. by its President,
Mr.N.K.Ramalingam,
S/o.N.V.Krishnamurthy Chettiar,
aged about 66 years,
28, Sree Raamanivasam,
Arya Vysyal Street, Shevapet,
Salem – 636 002.

... Petitioner

Vs.

The Deputy Commissioner of Income Tax,
Circle 1(1), Income Tax Office,
No.3, Gandhi Road,
Salem – 636 007.

... Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, calling for the records in ITBA/AST/S/143(3)2019-20/1023185233(1) dated 27.12.2019 on the file of the respondent relating to the Assessment Year 2017-18 and quash the same.

For Petitioner : Mr.G.Baskar

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

ORDER

In the Writ Petition, the petitioner has challenged the impugned order passed by the respondent on 27.12.2019 in respect of the amount received by the petitioner post demonetization i.e., between 09.11.2016 and 31.12.2016.

2.The learned counsel for the petitioner submits that regular returns were filed for the Assessment Year 2017-18 on 07.11.2017. After the returns were filed, proceedings were taken up and notice for completing the assessment was issued under Section 143(2) of the Act on 09.08.2018 followed by notices under Section 142(1) of the Income Tax Act on 20.06.2019 and 29.10.2019 to which the petitioner responded on 22.11.2019, 26.11.2019 and 16.12.2019, respectively pursuant to which the impugned assessment order has been passed.

3.It is the contention of the petitioner that in the impugned order, the respondent Deputy Commissioner has erroneously come to a conclusion that the petitioner has not properly explained the

deposit of cash amounting Rs.67,37,500/- collected during the demonetization into their account and that the petitioner has claimed the source of cash deposit during demonetization as the accumulated cash balance as on 08.11.2016 wrongly. In the impugned order, it has been concluded that the petitioner has not properly explained the source and the purpose of huge cash along with party wise break up as was requested vide notice dated 20.06.2019 and 29.10.2019 under Section 142(1) of the Income Tax Act, 1961.

4.The learned counsel for the petitioner submits that the informations were furnished as early as on 17.02.2017 and thereafter as per the formats requested by the respondent. He further submits that the petitioner had closing balance of cash on hand as on 31.10.2016 for a sum Rs.38,72,374/- which would consist of both demonetized and non-demonetized cash until then and thereafter, the petitioner received further cash deposit from the various subscribers amounting to Rs.57,85,655/- out of which a sum of Rs.26,77,716/- had already been deposited before the demonetization.

5.It is therefore contented that the amount which was not deposited before the demonetization amounting to Rs.67,37,500/- was explained in terms of the details furnished on 17.02.2017 in compliance with the requirements of the Reserve Bank of India, pursuant to demonetization of the currency on 08.11.2016.

6.The learned counsel for the petitioner further submits that the collection of amount by the petitioner during the period proceedings eight months was also not in variance with the amounts collected by the petitioner. The petitioner had collected approximately a sum of Rs.57,85,655/- during the first week of November 2016, which is in the case of chit business is as usual the collection was made during the aforesaid period. In any event, according to the petitioner, details which were called for by the respondent were furnished. He therefore submits that the observation made in the impugned order that the petitioner has not properly explained cannot be countenanced. He further submits that the petitioner is governed by the Provisions of Chit Fund Act, 1982 and Tamil Nadu Chit Funds Rules, 1984, as per which the petitioner required to maintain the ledger details for each of the subscribers and the amount deposited by the petitioner is only out of the amounts collected which are reflected in the register under the Act

and the rules made therein. He therefore submits that the amount of Rs.67,37,500/-, which is sought to be treated as unexplained income in the impugned order is nothing but the collection made from regular chit fund business of the petitioner.

7.The learned counsel for the petitioner therefore submits that the impugned order can be set aside and the case be remitted back to concerned officer to pass fresh orders after considering the records filed by the petitioner on 17.02.2017. The petitioner further submits that if the respondent so require, the petitioner shall also furnish further details of the ledgers for verification by the officer to conclude the said proceedings.

8.The learned counsel counsel for the petitioner would submit that if an opportunity to be given to the petitioner, the petitioner would explain the entire transaction pertaining to case flow upto 08.11.2016.

9.Per contra, the learned Standing Counsel for the respondent submits that the impugned order is well reasoned and therefore, no requires no interference. He further submits that the petitioner has an alternate remedy by way of appeal before the Commissioner

(Appeals) under the Income Tax Act, 1961. He further submits that before passing any order, the Commissioner (Appeals) may call for an enquiry report and pass appropriate orders.

10.The learned Standing Counsel for the respondent submits that though the power of the Commissioner (Appeals) to remit the case back to original authority has been taken away with effect from 01.06.2001, nevertheless the Commissioner (Appeals) can call for the records from the Officer and pass appropriate orders under Section 250 r/w 251 of the Income Tax Act, 1961. He submits that while undertaking such an exercise, the Commissioner (Appeals) would act like an Original Authority after getting necessary report from the assessing officer.

11.The learned Standing Counsel for the respondent further submits that Assessment Year 2017-18 onwards, assessments are through e-proceedings. He submits that the Income Tax Department has developed an e-proceedings facility, wherein a simple method of communication between the department and assessee has been devised negating the visit by the assessee or his representatives to the Department. The information which are loaded will be scrutinized and appropriate orders will be passed. He

further submits that it was open for the petitioner to call for the report of the respondent as per note on e-proceedings and the Commissioner (Appeals) has ample powers to pass appropriate orders.

12.I have considered the arguments advanced on behalf of the petitioner and the respondent.

13.I have also perused the records filed by the petitioner which precede the passing of the impugned order. As on 31.10.2016 the petitioner has claimed a closing cash of Rs.38,72,374/-. The closing cash on hand during the preceding months of the same year is not much invariance with the closing cash on hand as on 31.10.2016. Similarly, during the same period in 2015 also the petitioner has declared amounts similar to the closing cash on hand. For a comparison, the closing cash on hand for the two periods are expected as under:-

	Cash Collection		Cash Deposited		Closing cash on hand	
	Rs.		Rs.		Rs.	
Month	2015	2016	2015	2016	2015	2016
April	9777272	2298947	8074280	8007495	348565	219545

	Cash Collection		Cash Deposited		Closing cash on hand	
	Rs.		Rs.		Rs.	
May	10323853	9416184	8609412	8318302	482349	275223
June	10111274	9874688	8420104	8945100	259214	365133
July	10050864	9350936	7853584	8668592	297132	433907
August	9556583	9061621	7825801	8517878	250891	463886
September	10320523	8997606	8820844	8295792	233493	251029
October	11245212	12330140	9057158	7586046	263149	3872374
November	2191998	5785655	1729735	2677716	504612	6911913

14. The Government of India demonetized Rs.500 and Rs.1000 notes on 08.11.2016. Between 01.11.2016 and 08.11.2016, the petitioner had collected a sum of Rs.57,85,655/- which is also does not appear to be usual as compared to collections made during the November 2015. Out of the total collection of Rs.57,85,655/- and a closing cash of Rs.38,72,374/- as on 31.10.2016, the petitioner deposited an amount of Rs.26,77,716/- which is also not in variance with the cash deposits made by the petitioner during the preceding financial year. Collection of monthly subscription/dues by the petitioner during the aforesaid period appear to be reasonable as compared to be same period during 2015.

15.The Government of India has introduced E-Governance for conduct of assessment proceedings electronically. It is a laudable steps taken by the Income Tax Department to pave way for an objective assessment without human interaction. At the same time, such proceedings can lead to erroneous assessment if officers are not able to understand the transactions and statement of accounts of an assessee without a personal hearing. The respondent should have to be therefore at least called for an explanation in writing before proceeding to conclude that the amount collected by the petitioner was unusual.

16.In my view, the petitioner has *prima facie* demonstrated that the assessment proceeding has resulted in distorted conclusion on facts that amount collected by the petitioner during the period was huge and remained unexplained by the petitioner and therefore same was liable to be treated as unaccounted money in the hands of the petitioner under Section 69A of the Income Tax Act, 1961. Therefore, the impugned order making the petitioner liable to tax at the maximum marginal rate of tax by invoking Section 115BBE of the Income Tax Act, 1961 placing reliance on the decision of the Honourable Supreme Court in **Smt. Shrilekha Banerjee Vs. CIT,**

1964 AIR SC 697 appears to be misplaced..

17. Since the assessment proceedings no longer involve human interaction and is based on records alone, the assessment proceeding should have commenced much earlier so that before passing assessment order, the respondent assessing officer could have come to a definite conclusion on facts after fully understanding the nature of business of the petitioner. It appears that the return of income was filed by the petitioner on 02.11.2017. However, the assessment proceeding commenced much later towards the end of the period prescribed under section 153 of the Income Tax Act, 1961. In my view, assessment proceeding under the changed scenario would require proper determination of facts by proper exchange and flow of correspondence between the petitioner and the respondent Assessing Officer.

18. Under these circumstances, the impugned order is set aside and the case is remitted back to the respondent to pass a fresh order within a period of sixty days from date of receipt of a copy of this order. Petitioner shall file additional representation if any by treating the impugned order as the show cause notice within

a period of thirty days from date of receipt of a copy of this order. Since the Government of India has done away with the human interaction during the assessment proceedings, it is expected that the petitioner will clearly explain its stand in writing so that the respondent assessing officer can come to an objective conclusion on facts based on the records alone. It is made clear that the respondent will have to come to an independent conclusion on facts uninfluenced by any of the observation contained herein.

19.The Writ Petition stands allowed with the above observation. No cost. Consequently, connected Miscellaneous Petitions are accordingly closed.

04.02.2020

Index :Yes/No
Internet :Yes/No
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To
The Deputy Commissioner of Income Tax,
Circle 1(1), Income Tax Office,
No.3, Gandhi Road,
Salem – 636 007.

C.SARAVANAN, J.



Pre-Delivery Order
in
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