IN THE HIGH COURT OF KARNATAKA, BENGALURU

DATED THIS THE 5TH DAY OF AUGUST, 2015

BEFORE

THE HON'BLE MR. JUSTICE RAM MOHAN REDDY

WRIT PETITION NO. 5911 OF 2015 (T-IT)

BETWEEN:

MR.S.JAGANATHAN
AGED ABOUT 59 YEARS
LEGAL HEIR OF LATE A S SENGODA GOUNDER
NO.6, BRIDGE ROAD, PALLIPALAYAM
ERODE-638006.
OUT OF STATE

... PETITIONER

(By Sri. BALRAM R RAO, ADV.,)

AND

1. THE COMMISSIONER OF INCOME TAX
   BANGALORE-III
   INCOME TAX DEPARTMENT
   FIRST FLOOR, C R BUILDING
   QUEENS ROAD, BANGALORE-560001.

2. THE ASSISTANT COMMISSIONER OF
   INCOME TAX
   CENTRAL CIRCLE III
   INCOME TAX DEPARTMENT
   THIRD FLOOR, C R BUILDING
   QUEENS ROAD, BANGALORE-560001.

3. THE INCOME TAX OFFICER
   COMPANY WARD 12(2)
   IV FLOOR
   INCOME TAX DEPARTMENT
   NRUPATHUNGA ROAD
   BANGALORE-560001.

... RESPONDENTS

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO A] QUASH THE IMPUGNED RECOVERY NOTICE DATED 25.2.2013 AND 22.12.2014 PASSED BY THE R-3 VIDE ANN-T FOR THE ASSESSMENT YEAR 1995-96. B] RESTRAIN THE R-3 PROCEEDING FURTHER IN PURSUANCE OF THE IMPUGNED RECOVERY NOTICE DATED 25.2.2013 AND 22.12.2014 VIDE ANN-T FOR THE ASSESSMENT YEAR 1995-96. C] DIRECT THE R-1 TO GRANT THE CERTIFICATE IN TERMS OF SECTION 93 OF THE KAR VIVAD SAMADHAN SCHEME 1998 IN ACCEPTING THE FORM OF DECLARATION DATED 23.12.1998 FILED IN TERMS OF SECTION 92 OF THE KAR VIVAD SAMADHAN SCHEME 1998 ON BEHALF OF THE DECEASED ASSESSEE IN THE REGULAR ASSESSMENT PROCEEDINGS RELATING TO THE ASSESSMENT YEAR 1995-96 & ETC.,

THIS WRIT PETITION COMING ON FOR PRELIMINARY HEARING IN 'B' GROUP THIS DAY, THE COURT MADE THE FOLLOWING:

O R D E R

The assessee named A.S.Sengoda Gounder, since deceased was represented by his son the petitioner, in a declaration dated 22.12.1988, under Section 85 of Finance (No.2) Act, 1998 (KVSS), in Form-1A for assessment year 1995-96. The question of entitlement of the assessee to claim benefit under Kar Vivad Samadhan Scheme, for short 'KVS Scheme', when rejected by order dated 19.2.1999 of the commissioner of Income Tax, was questioned in WP.10603/1999, which petition when rejected by order dated 8.1.2004, was considered, in Writ Appeal 996/2004, whence it was observed thus :

> "The above appeal is disposed of without answering the question of law by holding that the assessee/appellant would be entitled to claim the benefit accruing under the KVSS only in the event of ITA 1029/2006 pending before this Court is dismissed and reaches finality, in as much as the protective assessment orders passed on 31-3-1998 and demand raised thereunder would get revived. In such an

> event the Designated Authority would consider the declarations filed by the appellants under Section 88 of the Finance Act dated 22-12-1998 Annexure 'C' and 'H' respectively in accordance with law subject to the assessees satisfying all other conditions under the Scheme. It is also made clear that, in the event the Revenue succeeds in the appeal i.e., ITA 1029/2006, the question of considering the declaration dated 22.12.1998 as per Annexure-'C' and 'H' would not arise.
>
> (emphasis supplied)

2. The miscellaneous petition to delete or modify the reference made to pending appeal i.e. ITA 1029/2006 in the Order dated 3.7.2009 in W.A.No.996/2004, was rejected by order dated 26.05.2011.

3. It appears ITA 1029/2006 filed by the revenue was allowed by order dated 31.3.2010 whereunder, the order of the tribunal was set-aside and the proceeding remitted to the assessing officer keeping all contentions open over substantial question of law No.3, which reads thus:-

> "Whether the Tribunal failed to recorded a finding as to whether the conclusion drawn by the first Appellate Authority that after a return is filed if the search is conducted the income declared by the assessee in the return cannot be brought to tax under the regular assessment but should be brought to tax under Chapter XIV-B block assessments of the Act".

Therefore it is for the Assessing officer to decide the case afresh.

4. Petitioner filed W.P.No.31503/2013, whence, a learned single Judge by order dated 13.8.2014 recording the submission of learned counsel for revenue that the order dated 3.7.2009, in W.A. 996/2004, would be complied within eight weeks, petition was disposed of.

5. In compliance with the said order, the Commissioner of Income Tax-III Bangalore, having regard to the specific finding in W.A.No.996/2004, more

appropriately, that in the event, the revenue succeeds in ITA 1029/2006, there was no question of considering the declaration dated 22.12.1998 of late A.S.Sengoda Gounder, represented by the petitioner, accordingly, by order dated 29.09.2014, Annexure-V, rejected, the claim for benefit under the 'KVS Scheme'.

6. The submission of the learned counsel for the petitioner that ITA 1029/2006 was in respect of assessment of the return filed by S. Jagannathan in his individual capacity and not as a legal representative of deceased A.S. Sengoda Gounder, is noticed to be rejected, since that plea ought to be advanced in WA 996/2004. Moreover the very same plea when advanced before the Commissioner of Income Tax, that authority had no jurisdiction to interfere with the Order in WA 996/2004.

7. In the circumstances, no exception can be taken to the finding and conclusion arrived at by the Commissioner of Income Tax in the order impugned calling for interference.

8. Sequentially, the reliefs to quash the recovery notice Annexure-T for the assessment year 1995-96 as also for a writ of prohibition to prohibit the 3rd respondent from proceeding further in pursuance of recovery notice Annexure-T and a writ of mandamus to the 1st respondent to grant a certificate in terms of Section 93 of 'KVS Scheme' by accepting the declaration dated 22.12.1998 of late A.S.Senagoda Gounder are unavailable to the petitioner. Petition rejected.

Sd/-
JUDGE

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