IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.8.2015

CORAM :

THE HONOURABLE MR.JUSTICE V.RAMASUBRAMANIAN
AND
THE HONOURABLE MR.JUSTICE T.MATHIVANAN

Writ Appeal No.1011 of 2015
&
M.P.No.1 of 2015

1. The Deputy Commissioner of Income Tax,
   Company Circle I (3),
   Chennai-34.

2. The Deputy Commissioner of Income Tax,
   Corporate Circle I (2),
   Chennai-34. ...Appellants

Vs

Cavinkare Pvt.Ltd.,
rep.by its General Manager (Finance)
Mr.R.Prabakara Kumar ...Respondent

APPEAL under Clause 15 of the Letters Patent to set aside the order dated 25.3.2015 in W.P.No.8445 of 2015 admitting the writ petition.

Prayer in W.P.No. 8445 of 2015:

To issue a Writ, direction or order in the nature of Certiorari or any other appropriate Writ application of order calling for the records of the first respondent in PAN No.AAACB3754B in the impugned Notice U/s 148 of the Act dated 29.3.2014 and the consequent proceedings issued by the second respondent in Co.Cir. I(2)/200/ 2014-15 dated 17.3.2015 and quash the same and pass such further or other orders that this court may deem fit.

For Appellants : Mr.T.Pramod Kumar Chopda

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Judgment was delivered by V.RAMASUBRAMANIAN,J

The Revenue has come up with the above appeal under Clause 15 of the Letters Patent questioning the correctness of a decision taken by a learned Judge to admit a writ petition and order notice.

2. Heard Mr.T.Pramod Kumar Chopda, learned counsel for the appellants.

3. It appears that the appellants issued a show cause notice under Section 148 of the Income Tax Act dated 29.3.2014 to the respondent. The reasons for reopening was communicated on 13.8.2014. After the respondent submitted a reply, another show cause notice was issued calling upon the respondent to show cause as to why a particular amount paid as salary to the wife of the Managing Director should not be disallowed under Section 40A(2)(a) of the Act. By the notice dated 4.3.2015, the appellants gave an opportunity to the respondent to appear before them. The respondent also appeared on 17.3.2015. Even on that day itself i.e. 17.3.2015, the appellants passed an order rejecting the objections of the respondent and directed the respondent to cooperate with the re-assessment proceedings.

4. Thereafter, the respondent filed a writ petition in W.P.No.8445 of 2015 challenging the show cause notice under Section 148 dated 29.3.2014 as well as the proceedings dated 17.3.2015. By the time the writ petition W.P.No.8445 of 2015 came up for admission before the learned Judge on 25.3.2015, the appellants had already passed a re-assessment order dated 23.3.2015.

5. The grievance of the Revenue is that despite pointing out to the learned Judge that the show cause notice has already culminated in an order of re-assessment even before the writ petition was posted for admission, the learned Judge admitted the writ petition. Therefore, as against the admission of the writ petition and the ordering of the notice, the Income Tax Department has come up with the above appeal.

6. But, we are of the considered view that the writ appeal is not maintainable. A mere admission of a writ petition does not give rise to a cause of action for the respondent in the writ petition to come up with an appeal. The admission of a writ petition is not a decision or order or judgment, that would make the respondent in the writ petition an aggrieved person.

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7. As a matter of fact, this Court has considered the scope of the mere ordering of notice in stay petitions, with reference to Appellate Jurisdiction under Clause 15. In cases where an ex parte relief is refused, but only a notice is ordered at the stage of admission, this Court has held that an appeal under Clause 15 was maintainable. Even in cases where a statutory notice is issued under Sections 11 and 12 of the Contempt of Courts Act, this Court has entertained appeals under Clause 15. But, in those cases, the refusal to grant an ex parte relief or the ordering of a statutory notice calling upon the respondent to appear to answer a contempt petition, were, per se, taken to make the other party aggrieved by such decisions. But, the said logic does not extend to the admission of a case.

8. It is relevant to take note of Rule 3(a) of the Rules to regulate proceedings under Article 226 of The Constitution, issued by this Court by virtue of Article 225. Under Rule 3(a), every writ petition, soon after it is numbered, should be posted for orders before Court as to issue of notice to the respondents. The Court may, upon hearing the petitioner or his advocate, either direct notice to be issued and grant such interim order as it may deem fit or reject the petition. While the rejection of a petition may give rise to a cause of action for the writ petitioner or the refusal to grant interim relief may give rise to a cause of action for the writ petitioner or the grant of an ex parte order may give rise to cause of action for the respondent, the mere admission of a writ petition will not give rise to a cause of action for the respondent to come up with an appeal.

9. Accordingly, the writ appeal is dismissed. Consequently, the above MP is also dismissed.

Sd/-
Assistant Registrar(CS-III)

सत्यमेव जयते

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Sub Assistant Registrar

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To

1. The Deputy Commissioner of Income Tax,
Company Circle I (3),
121 Mahatma Gandhi Road,
Nungambakkam, Chennai-34.

2. The Deputy Commissioner of Income Tax,
   Corporate Circle I (2),
   121 Mahatma Gandhi Road,
   Nungambakkam,
   Chennai-34.

W.A.No.1011 of 2015
and M.P.No.1 of 2015

SVI (CO)
PSI (11.09.2015)

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