IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:31.08.2015

CORAM

THE HONOURABLE MR.JUSTICE V.RAMASUBRAMANIAN

AND

THE HONOURABLE MR.JUSTICE T.MATHIVANAN

W.A.No.1238 of 2015
and
M.P.No.1 of 2015

The Deputy Commissioner of Income Tax
Company Circle VI(4)
Room No.705, Vanaparthy Block
121, M.G.Road
Nungambakkam, Chennai 600 034. .. Appellant/Respondent

vs

M/s.Star Aviation Pvt.Ltd.
rep.by its Director Sri.T.V.Dorairaj
No.90, II Floor
Dr.Radhakrishnan Salai
Mylapore, Chennai 600 004. .. Respondent/Petitioner

Prayer : Writ Appeal against the order of this Court dated 31.03.2015 passed in W.P.No.8761 of 2015.

W.P.No:8761 of 2015

Petition Under Article 226 of the constitution of India, to issue a writ of certeriari calling for the records in No.Misc/Co. Cir VI (4)/2014-15 dt 31.10.2014 relating to Assessment Year 2009-10 on the file of the respondent and quash the same.

For Appellant : Mr.T.Pramodkumar Chopda

J U D G M E N T

(Judgment of the Court was delivered by V.RAMASUBRAMANIAN.J.,)

This Writ Appeal is by the Department of Income Tax, questioning the correctness of the decision taken by a learned Judge to admit the writ petition.

2. Heard Mr.T.Pramodkumar Chopda, learned Standing Counsel for the Department.

3. It appears that the appellant issued a show cause notice under Section 148 of the Income Tax Act on 25.03.2014 (wrongly mentioning the date as 25.03.2013) to the respondent. The reasons for re-opening was communicated on 07.05.2014 and the assessee was asked to appear on 10.11.2014 for hearing. But, even before that, the appellant passed an order rejecting the objections of the respondent on 31.10.2014 and directed the respondent to co-operate with the re-assessment proceedings.

4. Thereafter, the respondent filed a writ petition in W.P.No.8761 of 2015 challenging the show cause notice under Section 148 dated 25.03.2014. By the time the writ petition came up for admission before the learned Judge on 31.03.2015, the appellant had already passed a re-assessment order dated 25.03.2015.

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. However, learned Standing Counsel wanted to make a distinction between the present appeal and the writ appeal in W.A.No.1011 of 2015, by contending that in W.A.No.1011 of 2015 the learned Judge dismissed the stay petition. But, in this case, the stay petition does not stand dismissed.

6. Even then, we do not think that the appeal is maintainable as against the refusal of a learned Judge to grant an ex parte interim stay at the time of admission. The writ petitioner may have a cause of action to file an appeal under Clause 15 of the Letters Patent; but the Department will have no cause of action.

7. Therefore, this writ appeal is also dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

To

+1cc to Mr.T.Pramodkumar Chopda, Advocate Sr.46305

W.A.No.1238 of 2015

ug[co]
srg 6.10.2015