IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.07.2016

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.14236 of 2016
and
WMP.No.12436 of 2016

R.Dayanandan ... Petitioner

Vs.

The Assistant Commissioner of Income Tax,
Office of Assistant Commissioner of Income Tax,
Non-Corporate Circle-23(1)(i/c),
Tambaram, Chennai - 600 045. ... Respondent

PRAYER: Writ Petition filed under Article 226 of Constitution of India praying to issue Writ of certiorarified mandamus to call for the records in PAN/GIR No.AABPD8543J, dated 31.03.2016 for the assessment year 2013-14 on the file of the respondent and quash the same as illegal against the principles of natural justice and direct the respondent to pass orders in accordance with law after giving reasonable opportunity to the petitioner.

For Petitioner : Mr.A.Thiayagarajan, SC
Assisted by Mr.S.Ramesh Kumar

For Respondent : Mr.T.Pramodkumar Chopda

O R D E R

Heard Mr.A.Thiayagarajan, learned Senior Counsel, assisted by Mr.S.Ramesh Kumar, learned counsel for the petitioner and Mr.T.Pramodkumar Chopra, learned standing counsel for the respondent department, and with their consent, the writ petition itself is taken up for final disposal.

2. The order challenged in this writ petition is an assessment order for the year 2013-2014 under Section 143 (3) of the Income Tax Act, 1961. The Court posted a question to the learned Senior counsel for the petitioner as to why the petitioner has not availed the alternative remedy of filing an appeal against the impugned assessment order. Learned Senior counsel submitted that the impugned assessment has been

completed on the basis of the statement recorded from one Chinnappan, who is the lessee of the petitioner. It is submitted that the statement was recorded behind the back of the petitioner and no opportunity was granted to him to cross-examine Chinnappan.

3. Learned standing counsel appearing for the respondent department has produced the records, from which, it is seen that on 30.03.2016, an authorised representative of the petitioner, who represented him in the personal hearing, clearly stated that he does not want to cross-examine the said Chinnappan. Therefore, this being the disputed question of fact, the petitioner has to necessarily approach the appellate authority and this disputed question cannot be adjudicated in a writ petition filed under Article 226 of the Constitution of India.

4. Accordingly, the writ petition is dismissed as not maintainable. However, liberty is given to the petitioner to file an appeal before the appellate authority. Since this writ petition was filed within the time limit within which the appeal could have been filed, the appellate authority, while entertaining the appeal, shall exclude the period during which the writ petition was pending i.e. from 13.04.2016 till the date of receipt of a certified copy of this order while computing the limitation. No Costs. Consequently, WMP.No.12436 of 2016 is closed. The Registry is directed to return the original impugned order.

Sd/-
Assistant Registrar(J)

//True Copy//

Sub Assistant Registrar

rkm

To

The Assistant Commissioner of Income Tax,
Office of Assistant Commissioner of Income Tax,
Non-Corporate Circle-23(1)(i/c),
Tambaram, Chennai - 600 045.

+1cc to Mr.S.Ramesh Kumar, Advocate, S.R.No.
+1cc to Mr.T.Pramodkumar Chopda, Sr.S.C. for I.T. Dpt., S.R.No.39134

W.P.No.14236 of 2016

BVR(CO)
CA(27/07/2016)