IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.07.2016

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.14265 of 2016
and
WMP.No.12460 of 2016

D.Thanigaivel ... 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.ANKPT9173G, dated 30.03.2016 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, Senior Counsel
Assisted by Mr.S.Ramesh Kumar

For Respondent : Mr.T.Pramodkumar Chopra

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. In this writ petition, the petitioner has challenged the assessment order for the year 2013-2014 under Section 143 (3) of the Income Tax Act, 1961. The only ground in which the petitioner has questioned the impugned order without approaching the appellate authority, is by contending that three persons have been examined behind the back of the petitioner and without notice to the petitioner, the respondent has to come to the

conclusion that for 20 years, no agricultural activity was done in the property. Therefore, the petitioner's contention is that he has been denied an opportunity to cross-examine those three persons. That apart, the authority has not rightly appreciated the documents which they have placed before him to show that the lands were agricultural lands.

3. It is pointed out by the learned counsel for the respondent department that if the property was an agricultural property, the petitioner should have filed records to show that he had declared his agricultural income and there is no such record. All these issues can very well be agitated before the appellate authority, who has got the jurisdiction to re-appreciate the facts. That apart, it can also receive the additional documents,which can be appreciated by the appellate authority, because an appeal is the continuation of the original proceedings.

4. In the light of the above, the writ petition stands disposed of with liberty to the petitioner to file an appeal before the appellate authority and the appellate authority, while entertaining the appeal, shall exclude the period during which the writ petition was pending before this Court 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.12460 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.38913
+1cc to Mr.T.Pramod Kumar, Sr.S.C for Income Tax Dept.,
S.R.No.39137

W.P.No.14265 of 2016

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