IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.12.2017

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THE HONOURABLE MR.JUSTICE **T.S.SIVAGNANAM**

W.P.No.30285 of 2017 & W.M.P.No.33007 of 2017

Kedarnathagarwal Subash Agarwal ... Petitioner

Vs.

1.Commissioner of Income Tax (Appeals)-8,
121, Uthamar Gandhi Salai,
Chennai-600 034.

2.The Assistant Commissioner of Income Tax,
Corporate Circle 4(1),
121, Uthamar Gandhi Salai,
Chennai-600 034. ... Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus, to call for the records on the file of the first respondent passed in ITA No.24/12-13 for AY 2010-11 dated 06.09.2017 and quash the same as illegal and against the principles of natural justice and fair play and direct the first respondent to provide opportunity of hearing in the appeal filed against the assessment order in BEEPS8267J dated 24.12.2012.

For Petitioner : Mr.N.V.Balaji

For Respondents : Mrs.Hema Muralikrishnan
Senior Panel Counsel

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ORDER

Heard Mr.N.V.Balaji, learned counsel for the petitioner and Mrs.Hema Muralikrishnan, learned Senior Panel Counsel for the respondents. With consent on either side, this writ petition itself is taken up for final disposal.

2.The petitioner is before this Court challenging an order passed by the first respondent dated 06.09.2017, by which the petitioner's appeal petition filed against the assessment order dated 24.12.2012, for the assessment year 2010-11 was dismissed largely due to non-cooperation of the assessee and non-appearance before the appellate authority. The petitioner has no reasonable explanation to offer for the continuous non-appearance before the respondent.

3.The counter affidavit in paragraph 2, which is tabulated, clearly shows that the assessee has not cooperated either before the assessing officer or before the appellate authority. However, it appears that the assessee had engaged a counsel to defend him before the appellate authority during October 2015. Thereafter, five adjournments were sought for, which were granted by the appellate authority. However, on 20.01.2017 and 27.02.2017, there was no appearance on behalf of the assessee. Subsequently, a letter dated

09.03.2017, was given seeking adjournment stating that the learned counsel is held up before the High Court. Subsequently, for the hearing on 20.06.2017, none appeared before the appellate authority. On 21.08.2017, a letter was circulated by the counsel seeking adjournment on personal ground that he is unwell. Thus, the appellate authority having granted such indulgence to the assessee, was not inclined to wait any longer and disposed of the appeal by passing the impugned order.

4.I am in full agreement with the view expressed by the appellate authority. Had it been the proceedings before this Court, the matter would have been dismissed for non prosecution long back. However, the appellate authority has been gracious enough to grant adjournments at request as well as adjourned the matter even when there was no representation. Therefore, the assessee cannot have any compliant or grievance against the manner in which the appellate authority has dealt with while deciding the appeal.

5.Learned counsel for the petitioner also does not dispute the stand taken by the respondent/revenue, but, on the other hand, would candidly admit that on certain dates he had sought for adjournment for specified reasons.

6.Be that as it may, this Court is concerned about not only the interest of the assessee but also the revenue, that is to say that appropriate rate of tax has to be collected from the assessee. If I agree with the learned Senior Standing Counsel and dismiss this writ petition on the ground that there is an alternate remedy under the provisions of the Income Tax Act, then in all probabilities, the matter would go before the ITAT, which would once again remand the matter either before the appellate authority or before the assessing authority for re-opening the factual exercise. Thus, only for such reason, this Court is inclined to interfere with the impugned order, apart from affording last opportunity to place on record the facts, which, according to the assessee, are already on record. Thus, while approving the manner in which the appellate authority has dealt with the matter, on the above technical grounds, this Court is inclined to interfere with and send back the matter to the appellate authority to take a decision on merits.

7.Thus, for the reasons stated in the preceding paragraphs, this writ petition is allowed, the impugned order is set aside and the matter is remanded to the first respondent for fresh consideration to take a decision on merits and in accordance with law, making it clear that the assessee should be ready to argue the appeal on the date fixed by the appellate authority without seeking for an adjournment. No costs. Consequently, connected miscellaneous petitions is closed.

12.12.2017

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Index:Yes/No

To

1.The Commissioner of Income Tax (Appeals)-8,
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Chennai-600 034.

2.The Assistant Commissioner of Income Tax,
Corporate Circle 4(1),
121, Uthamar Gandhi Salai,
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T.S.SIVAGNANAM, J.

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