In the High Court of Judicature at Madras

Dated : 05.12.2017

Coram :

The Honourable Mr.Justice T.S.SIVAGNANAM

Writ Petition Nos.31385 & 31510 of 2017
& WMP.Nos.34526 & 34615 of 2017

Mr.Praveen Kumar	...Petitioner in WP. No.31385/2017
Mrs.S.Anitha	...Petitioner in WP. No.31510/2017

Vs

1.The Commissioner of Income Tax (Appeals)-13, Aayakar Bhavan, 121, Mahatma Gandhi Road, Nungambakkam, Chennai-34.

2.The Assistant Commissioner of Income Tax, Non Corporate Circle-12, Chennai-6. ...Respondents in both WPs

PETITIONS under Article 226 of The Constitution of India praying for the issuance of Writs of Certiorari to call for the records in proceedings PAN : ATPPS0023F/asst.year 2009-10 on the file of the second respondent and quash the same.

For Petitioners : Mr.P.Madhavan

For Respondents : Mr.J.Narayanasamy, SSC

COMMON ORDER

Mr.J.Narayanasamy, learned Senior Standing Counsel accepts notice for the respondents. Heard both.

2. The petitioners are brother and sister and are the children of one Mr.P.N.Subramani. They are aggrieved by the common assessment order passed by the second respondent dated 30.3.2015 for the year 2009-10. The petitioners' father - the said Mr.P.N.Subramani passed away on 16.9.2010. It appears that

there was a serious difference of opinion between the petitioners' father and their mother one Mrs.P.S.Dhanalakshmi and the dispute ultimately ended in a decree of divorce by mutual consent in F.C.O.P.No.1629 of 2008 on the file of the First Additional Family Court, Chennai dated 30.5.2008, by which, the petitioners' mother accepted a permanent alimony and agreed that she will not make any claim including maintenance against the petitioners' father.

3. It is submitted by the learned counsel for the petitioners that though in the decree of divorce, it has been mentioned that two children namely the petitioners herein were born to the said late Mr.P.N.Subramani and the said Mrs.P.S.Dhanalakshmi and recorded that they attained majority, in the last Will and testament executed by the petitioners' father dated 07.6.2007, it has been stated that he had no issues either male or female born to him and that he was living with his brother one Mr.P.N.Arumugam's family. Therefore, it is further submitted that their father disinherited the petitioners, that they have not succeeded to any part of his estate and that when their parents were separated by way of a decree of divorce dated 30.5.2008, the question of now making the petitioners liable for the alleged income tax, which was payable by the petitioners' father, does not arise.

4. It is also submitted by the learned counsel for the petitioners that the entire proceedings namely the common assessment order as well as the orders passed by the Commissioner of Income Tax (Appeals) are vitiated on the ground of violation of the principles of natural justice, as the assessment proceedings were ex parte proceedings and the petitioners did not have notice of such proceedings. To substantiate this contention, the learned counsel for the petitioners has drawn the attention of this Court to page 8 of the common assessment order dated 30.3.2015 wherein it has been stated that an Inspector of the Income Tax Department was deputed to the office of the Tahsildar concerned to verify the original legal heirship certificate, that on verification, they came to know that the names of the petitioners are mentioned as legal heirs, that the notice was sent for the hearing on 24.3.2015 and that as there was no appearance for the hearing, the assessment was completed.

5. It is pointed out that in the legal heirship certificate, the address given for the petitioners is door No.1, plot No.4, Gopal Avenue, Valasarawakkam, Chennai-87 whereas the address given in the assessment order is No.117, Arcot Road, Alwarthiru Nagar, Chennai-87, which is a place where the family was residing when they were united. It is also pointed out that the assessment order has been passed without giving an

opportunity to the petitioners and when this issue was pointed out to the first respondent namely the Commissioner of Income Tax (Appeals), the same has not been appreciated by the first respondent and the orders passed by the first respondent dated 28.9.2016 are verbatim repetition of the order of assessment.

6. After hearing the learned counsel for the parties and carefully perusing the materials placed on record, this Court finds that the issues canvassed by the petitioners in these writ petitions are complicated questions of fact. Rather they are disputed questions of fact, which are needed to be established by the petitioners - the propounders of the affidavits. Therefore, the petitioners should necessarily avail the remedy under the provisions of the Income Tax Act, 1961, which provides for an appeal before the Income Tax Appellate Tribunal.

7. Further, it is relevant to point out that the Tribunal, being the last forum, which can adjudicate into the factual disputes, would be well within its jurisdiction to call for the records, examine and appreciate the correctness of the same, make a thorough exercise and then come to a conclusion as to whether the order of assessment has been passed in a proper manner in due compliance of the provisions of the said Act. Hence, the petitioners have to avail the appeal remedy provided under the said Act. For all the above reasons, this Court holds that the writ petitions are not maintainable.

8. Accordingly, the writ petitions are dismissed. No costs. Consequently, the connected WMPs are also dismissed.

9. However, the petitioners are at liberty to move the Income Tax Appellate Tribunal as against the orders passed by the first respondent dated 28.9.2016. It is needless to state that the petitioners can raise all factual and legal issues before the Tribunal, which shall be adjudicated by the Tribunal.

Sd/-
Assistant Registrar

//True copy//

Sub Assistant Registrar

rs

To
1.The Commissioner of Income Tax (Appeals)-13,
Aayakar Bhavan,
121, Mahatma Gandhi Road,
Nungambakkam, Chennai-34.

2.The Assistant Commissioner of Income Tax,
Non Corporate Circle-12,
Chennai-6.

+2cc to Mr.J.Narayanasamy, Advocate SR.No.87049,87048
+2cc to Mr.P.Madhavan, Advocate SR.No.85959,85960

WP.Nos.31385 & 31510 of 2017&
WMP.Nos.34526 & 34615 of 2017

GN(12/12/2017)