IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.01.2018

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THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.Nos.14366 & 14367 of 2011

Mamtha ... Petitioner in W.P.No.14366/2011

B.Prakash Chand ... Petitioner in W.P.No.14367/2011

Vs.

The Commissioner of Income Tax-VIII,
3rd Floor, Main Building,
121, Nungambakkam High Road,
Nungambakkam, Chennai-600 034. ... Respondent in both the W.Ps.

Petitions filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus, to call for the records of the impugned order Nos. C.No.22(3)/CIT-VIII/264/2009-10 & C.No.22(5)/CIT-VIII/264/2009-10 respectively, dated 25.03.2011, passed by the respondent and quash the same and directing the respondent to consider the petitioner's plea for the grant of refund of tax by excluding the capital gains on agricultural land and interest on the refunded amount.

For Petitioner : Mr.V.S.Jayakumar

For Respondent : Mr.J.Narayanaswamy, Senior Standing Counsel

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C O M M O N O R D E R

Heard Mr.V.S.Jayakumar, learned counsel for the petitioner and Mr.J.Narayanaswamy, learned Senior Standing Counsel for the respondents.

2.The petitioners in these two writ petitions are related, in the sense that the petitioner in W.P.No.14366 of 2011 is the daughter-in-law of the petitioner in W.P.No.14367 of 2011. The petitioners have impugned the orders passed by the respondent under Section 264 of the Income Tax Act, 1961 (hereinafter referred to as "the Act"), wherein the respondent held that he finds no reason to revise the intimation sent to the assessee accepting the income tax return under Section 143(1) of the Act.

3.It may not be necessary for this Court to test the correctness of the impugned proceedings, as the writ petitioners have availed an alternate remedy available under the Act by filing a petition under Section 154 of the Act, vide petition dated 13.06.2011 and dated 'Nil' respectively, before the assessing officer viz., the Deputy Commissioner of Income Tax Circle I(I), Vellore and the said petitions are pending before the authority. Therefore, the learned counsel for the petitioners submitted that direction may be issued to the assessing officer to dispose of those petitions in accordance with law.

4.Learned Senior Standing Counsel for the respondent submitted that if the petitions are pending with the assessing officer, then reasonable time should be granted to the assessing officer to consider the same on merits. It is seen that the said petitions were sent by the petitioners by speed post on 17.06.2011, and in all probabilities, they should be available in the assessment file.

5.In the light of the above, these writ petitions are disposed of by directing the Deputy Commissioner of Income tax Circle I(I), Vellore, to consider the petitioners' petitions filed under Section 154 of the Act, dated 13.06.2011 and 'Nil' and pass orders on merits and in accordance with law after affording an opportunity of personal hearing to the authorized representative of the petitioners. By way of abundant caution, the petitioners are directed to present copies of the petitions, along with a copy of this order by appearing in person before the assessing officer. Since the assessing officer is not a party to these writ petitions, Registry is directed to communicate the copy of this order to the Deputy Commissioner of Income Tax Circle I(I), Vellore. No costs.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

abr

To

1.The Commissioner of Income Tax-VIII,
3rd Floor, Main Building,
121, Nungambakkam High Road,
Nungambakkam, Chennai-600 034.

2.The Deputy Commissioner of Income tax,
Circle I(I), Vellore.

+2 ccs to Mr.V.S.Jayakumar Advocate sr 908
+2 ccs to Mr.J.Narayanaswamy Advocate sr 1715 & 1716

W.P.Nos.14366 and 14367 of 2011

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