IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 16.08.2018

CORAM

THE HON'BLE MR. JUSTICE K.RAVICHANDRABAABU

W.P.No.21029 of 2018
and
WMP.No.24690 of 2018

M.Duraivel ... Petitioner

vs.

1. The Commissioner of Income Tax
Office of the Principal Commissioner of Income Tax
Room No.601, 6th Floor, New Block
121, Mahathma Gandhi Road,
Chennai-34.

2. The Assessment Officer
Non-Corporate Ward 15(1)
Wanaparthy Block
2nd Floor, 121, Nungambakkam High Road,
Chennai-34.

3. The Tax Recovery Officer-6
Room No.426-E, 4th Floor, New Block,
"Ayakar Bhawan"
121, Nungambakkam, High Road,
Chennai-34. ... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, to call for the records and quash the order of the 2nd respondent dated 28.11.2016.

For Petitioner : Mr.P.Ravishankar Rao
For Respondents : Mr.ANR.Jaya Prathap
Standing Counsel

O R D E R

Mr.ANR.Jaya Prathap, learned standing counsel takes notice for the respondents. By consent of the parties, the writ petition itself is taken up for final disposal at the admission stage.

2. The petitioner is aggrieved against the order of assessment dated 28.11.2016 in respect of the assessment year 2006-2007. It is seen that an order of assessment was made in respect of the assessment year 2006-2007 under Section 143(3) r/w Section 147 of the Income Tax Act, 1961 dated 11.02.2014. However, the Principal Commissioner, by exercising his power under Section 263 of the Income Tax Act, 1961, set aside the said assessment order dated 11.02.2014 and directed the Assessing Officer to redo the assessment in respect of certain

issues referred to in the order made under Section 263 of the Income Tax Act, 1961. Challenging the said order of the Principal Commissioner dated 05.11.2015, the petitioner went on appeal before the Income Tax Appellate Tribunal, which in turn, by order dated 05.05.2016, dismissed the appeal. It is stated by the petitioner that challenging the said order of the Tribunal, an appeal is preferred before this Court, however, with a delay of 562 days and that the application filed for condoning the delay in CMP.No.7941 of 2018 is still pending. In the mean time, in pursuant to the order passed by the Tribunal on 05.05.2016, as stated supra, the Assessing Officer, in-compliance passed by the Principal Commissioner under Section 263 of the Income Tax Act, 1961, has re-assessed and passed the present impugned order of assessment as early as on 28.11.2016. Now, after 2 years, the petitioner seeks to challenge the said order before this Court, by filing the present writ petition.

3. Heard both sides.

4. Upon considering the above stated facts and circumstances and the very fact that this writ petition is sought to be filed as against the order of assessment, that too, after a period of nearly 2 years, this Court is not inclined to entertain the writ petition and express any view on the merits of the matter. Even otherwise, as against the order impugned in this writ petition, a statutory appellate remedy is available to the petitioner before the concerned Appellate Authority. But, the petitioner has not filed any such appeal before the Appellate Authority so far. Even the appeal said to have been filed against the order passed by the Tribunal dated 05.05.2016 is also not within time and on the other hand, admittedly, with a delay of 562 days. Therefore, I find that the petitioner has not shown any justifiable reason or ground to entertain this writ petition, apart from the fact that he is having an effective alternative remedy, by way of filing an appeal. Therefore, without expressing any view on the merits of the matter, this writ petition is dismissed. However, dismissal of this writ petition will not stand in the way of the petitioner in filing an appeal before the Appellate Authority, by explaining the delay in filing such appeal as well. If any such appeal is filed, the concerned Appellate Authority will consider the same, including the application for condoning the delay and pass orders on its own merits and in accordance with law. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

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To
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Chennai-34.

+1cc to Mr.A.P.Srinivas, Advocate SR.NO.56600
+1cc to Mr.V.Gangadharan, Advocate SR.NO.56341

BR(CO)
sm:7.9.2018

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