IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.04.2018

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.6440 of 2007
and M.P.No.2 of 2007

T.P.Dhamodaran,
S/o.O.Palaniappan. ... Petitioner

Vs.

1.The Income-tax Officer,
Ward II (1), Salem-7.

2.The Tax Recovery Officer-II,
Salem. ... Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorari, to call for the records of the first respondent relating to the assessment of O.Palaniappan (PAN No.21PP 0075/H(1)/SLM) for the assessment year 1998-99 and quash the assessment order dated 31.03.2004 made therein.

For Petitioner : M/s.D.Nishanshiya Velanganni
for Mr.S.Raveekumar

For Respondents : Mr.A.P.Srinivas,
Senior Standing Counsel
assisted by Mr.A.N.R.Jayaprathap
Junior Standing Counsel

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O R D E R

Heard M/s.D.Nishanshiya Velanganni, learned counsel for Mr.S.Raveekumar, learned counsel for the petitioner, and Mr.A.P.Srinivas, learned Senior Standing Counsel assisted by Mr.A.N.R.Jayaprathap, learned Junior Standing Counsel for the Revenue.

2. The petitioner has filed this writ petition praying for issuance of Writ of Certiorari to quash the impugned proceedings made in the name of O.Palaniappan, for the assessment year 1998-99.

3. The undisputed fact is that, the assessee died on 08.05.1998, leaving behind as many as 10 legal heirs. The assessment order came to be passed on 31.03.2004, after six years after the demise of the assessee. Surprisingly, an appeal was filed before the Commissioner of Income Tax (Appeals) in the name of the dead person.

4. The learned counsel for the petitioner submits that the copy of the appeal petition will clearly show that somebody has signed with the endorsement "for appellant". Therefore, the appeal petition filed in the name of the dead person, not by the assessee, is not valid in the eye of law. That apart, the assessment made after six years after the demise of the assessee, that too, in the name of the deceased assessee, is a nullity. Thus, the respondents cannot rely upon such proceedings to recover any tax from the legal heirs of the deceased assessee.

5. For the above reasons, this writ petition is allowed and the impugned order is set aside. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

abr
To

1.The Income-tax Officer,
Ward II (1), Salem-7.

2.The Tax Recovery Officer-II,
Salem.

+1cc to Mr.S.RAVEEKUMAR, Advocate, S.R.No.25357
+1cc to Mr.A.P.SRINIVAS, Advocate, S.R.No. 25394

W.P.No.6440 of 2007

KS(CO)
TR(19/04/2018)