IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.12.2018

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THE HONOURABLE MR.JUSTICE K.RAVICHANDRABAABU

Writ Petition Nos.32162 & 32164 of 2018
and
W.M.P.Nos.37418 & 37419 of 2018

Sri.P.Thangaraju ...Petitioner (in both WPs)

vs.

Office of the Income Tax Officer
Range-I, Ward-I(4)
15, Gandhiji Road,
Erode-638 001. ...Respondent (in both WPs)

Writ petitions filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, to call for the records relating to the assessment order passed by the respondent for the assessment year 2008-2009 dated 09.11.2018, and Assessment Year 2007-2008 dated 09.11.2018 and quash the same and consequently, to direct the respondent to issue copies of the documents as requested in the representations of the petitioner dated 27.10.2018, 07.11.2018 and 09.11.2018 and conduct fresh proceedings.

For Petitioner : Mr.Niranjan Rajagopalan (in both WPs)

For Respondent : Mr.A.P.Srinivas standing counsel (in both WPs)

COMMON ORDER

Mr.A.P.Srinivas, learned standing counsel takes notice for the respondent. By consent of the parties, these writ petitions are taken up for final disposal at the admission stage itself.

2. These writ petitions are filed challenging the orders of assessment dated 19.11.2018 passed under Section 143(3) r/w Section 147 of the Income Tax Act, in respect of the assessment years 2007-2008 & 2008-2009 respectively.

3. Heard Mr.Niranjan Rajagopalan, learned counsel for the petitioner and Mr.A.P.Srinivas, learned standing counsel for the respondent.

4. In respect of the assessment years 2007-2008 & 2008-2009, the Assessing Officer has re-opened the assessment under Section 147 of the IT Act. The notices dated 01.03.2011 & 28.02.2011 issued under Section 148 of the IT Act, for re-opening the assessment were put to challenge before this Court in WP Nos.30420 & 30421 of 2011 along with other two writ petitions filed in WP.Nos.1528 & 1529 of 2012. This Court, by order dated 03.09.2018, disposed of those writ petitions, by directing the petitioner to make objections/reply to the notices issued under Section 148 of the IT Act, with further direction to the Assessing Officer to pass appropriate orders on merits and in accordance with law. Thereafter, the petitioner made their reply and consequently, the present impugned orders are passed under Section 143(3) r/w Section 147 of the Income Tax Act.

5. Though Mr.Niranjan Rajagopalan, learned counsel for the petitioner sought to raise so many contentions touching upon the merits of the assessment, this Court is not inclined to go into such contentions for the simple reason that as against the final orders of assessment, the petitioner is having a statutory appellate remedy before the concerned Appellate Authority. Further perusal of the impugned orders would show that the Assessing Officer has dealt with the issue involved in these assessment in detail and passed an elaborate order running to several pages, by extracting various documents as well as the contentions raised by the petitioner and the reasons for over ruling those objections. This Court, at this stage, is not expressing any view on the merits of the assessment, as certainly, any view so expressed will touch upon the facts and circumstances of the case, which, according to this Court, has to be gone into and decided, only by the next fact finding authority viz., First Appellate Authority. Needless to state that the petitioner is entitled to raise all the objections as raised in these writ petitions before the first Appellate Authority, who in turn will consider and pass orders on the appeal to be filed by the petitioner on merits and in accordance with law.

6. The learned counsel for the petitioner further contended that certain documents which are not in possession of the petitioner has been relied on by the Assessing Officer and therefore, the Assessing Officer may be directed to furnish those documents.

7. It is open to the petitioner to make a request before the Assessing Officer to furnish such of those documents which are not in his possession for filing such appeal. If any such request is made, the same shall be considered by the Assessing Officer and pass appropriate orders accordingly. Thus, considering the above stated facts and circumstances and without expressing any view on the merits of the matter, these writ petitions are disposed of, only by granting liberty to the petitioner to file a statutory appeal before the first Appellate Authority, by complying with the other statutory requirements for filing such appeal. No costs. Connected miscellaneous petitions are closed.

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Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To
Office of the Income Tax Officer
Range-I, Ward-I(4)
15, Gandhiji Road,
Erode-638 001.

+1cc to Mr.A.P.Srinivas, Senior Standing Counsel for Income Tax, S.R.No.83950

+2cc to M/s. G.R.Associates, Advocate,
S.R.No.83758,83759

WP. Nos.32162 & 32164 of 2018

SPD(CO)
KAK(04/01/2019)