THE HON'BLE SRI JUSTICE SANJAY KUMAR
AND
THE HON'BLE SRI JUSTICE P.KESHAVA RAO

WRIT PETITION No.1946 of 2018

ORDER: (per SK,J)

The assessment order dated 22.12.2017 passed by the Income Tax Officer, Ward-1, Suryapet, under Section 143(3) of the Income-tax Act, 1961 (for short, 'the Act of 1961'), for the assessment year 2011-2012, is sought to be challenged by way of this writ petition.

It is not in dispute that this assessment order is appealable under Section 146 of the Act of 1961.

Sri P.A.Seshu, learned counsel for the petitioner, would however contend that when a notice under Section 148 of the Act of 1961 was issued on 31.03.2017, the petitioner addressed communication dated 26.04.2017 to the Assessing Officer asking for the reasons for reopening the assessment under Section 148 of the Act of 1961. Learned counsel would rely upon the decision of the Supreme Court in GKN DRIVESHAFTS (INDIA) LIMITED v. INCOME TAX OFFICER[1], wherein it was observed that the Assessing Officer is bound to furnish reasons for issuing a notice under Section 148 of the Act of 1961 when the assessee seeks the same.

Sri Vinod Kumar Tadakamalla, learned counsel for the Revenue, however produced before us photo copies of the extracts from the record, which demonstrate that, by letter dated 15.06.2017, the Assessing Officer informed the petitioner the reasons for reopening the assessment.

Though Sri P.A.Seshu, learned counsel, would deny receipt of this letter dated 15.06.2017, the record reflects that the said communication

[1] 2003 (1) SCC 72

was served by affixture as the assessee was not available at the address. As the whereabouts of the assessee were not known, the Revenue resorted to service of the communication by affixture in the presence of witnesses.

Given the aforestated circumstances, we are of the opinion that when an effective alternative appellate remedy is provided in the statute, it is not open to the assessee to circumvent the same and directly approach this Court by invoking its extraordinary jurisdiction under Article 226 of the Constitution (See ASSISTANT COLLECTOR OF CENTRAL EXCISE, CHANDAN NAGAR, WEST BENGAL v. DUNLOP INDIA LTD[2] and TITAGHUR PAPERMILLS CO. LTD. v. STATE OF ORISSA[3]).

The writ petition therefore fails on this short ground and is accordingly dismissed. We make it clear that this order shall not preclude the petitioner from working out his remedies before the appropriate forum in accordance with law.

Pending miscellaneous petitions, if any, shall also stand dismissed. No order as to costs.

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SANJAY KUMAR,J

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P.KESHAVA RAO,J

Date:29.01.2018
GJ

[2] (1985) 1 SCC 260 = 1985 SCC (Tax) 75
[3] (1983) 2 SCC 433 = 1983 Tax LR 2905 = (1983) 142 ITR 663