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

WRIT PETITION No.3028 OF 2018

ORDER: (per Hon'ble Sri Justice Sanjay Kumar)

The petitioner/assessee seeks to assail the Assessment Order dated 29.11.2017 passed by the Assistant Commissioner of Income Tax, Ward-9(2), Hyderabad, under Section 143(3) of the Income-tax Act, 1961 (for short, 'the Act of 1961').

Apart from the fact that the aforestated order is appealable under Section 146 of the Act of 1961, we find that the Assessing Officer recorded in the first paragraph of the order as to how many opportunities were given to the petitioner/assessee to come before him and produce the relevant information. This paragraph reads as under:

> "The assessee, an individual, had not filed the return of income for the A.Y.2014-15. As the then AO observed that income chargeable to tax has escaped assessment notice u/s 148 was issued to the assessee on 21.09.2016. Thereafter several notices u/s 142(1) were issued on various dates. Initially, the assessee did not respond to these notices and finally his phone no.9676563636 could be traced and on continuous persuasion, he attended proceedings and appeared and promised to furnish information. He appeared on 29.09.2017 and on his request the case is adjourned to 11.10.2017. On the date of hearing, he appeared and sought one more adjournment. Considering his request, the case was posted for hearing on 24.10.2017. On the date of hearing there is no response from the assessee. He was contacted over phone and it was informed that unless he gives information which will facilitate the undersigned to complete the assessment, the undersigned will be constrained to complete the assessment as per the information available on record. Though he was

> requested several times, he did not choose to attend and furnish the information required. It is therefore, the assessment is being completed as per the material available on record."

There is therefore no substance in the contention of Sri M.Govind Reddy, learned counsel for the petitioner, that there is a clear violation of the principles of natural justice and that the same is reason enough for this Court to entertain this writ petition.

Though Sri M.Govind Reddy, learned counsel, would point out that the petitioner has made the Assessing Officer a party to this writ petition by name and shown him as respondent No.3, we find from the affidavit filed in support of the petition that no allegations whatsoever have been made against respondent No.3 and no *mala fides* have been attributed to him. In fact, respondent No.3 does not even find mention in any of the paragraphs of the writ affidavit.

Sri M.Govind Reddy, learned counsel, would further state that the information sought was furnished by the petitioner/assessee before the Assessing Officer. However, he fairly concedes that no material is available with him in proof of the same.

That being so, as the Assessing Officer has specifically recorded in the Assessment Order that in spite of many opportunities given to him, the assessee failed to furnish the information required, we are not inclined to accept the *ipsi dixit* and self-serving statement of the petitioner/assessee to the effect that he furnished the relevant information to the Assessing Officer.

On the above analysis, we are of the opinion that this writ petition is nothing short of an abuse of process as the petitioner did not choose to invoke the appellate remedy available to him under the Act of 1961 and came before this Court directly by impleading the Assessing Officer by name though he seems to have no complaint against him personally.

The writ petition is accordingly dismissed.

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: 15.02.2018
ES/CCM