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

WRIT PETITION Nos.2339 & 2391 of 2018

COMMON ORDER: (per SK,J)

The assessment orders dated 28.12.2017 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 years 2011-2012 and 2010-2011 are sought to be challenged by way of these writ petitions.

It is not in dispute that these assessment orders are appealable under Section 146 of the Act of 1961.

Sri P.A.Seshu, learned counsel appearing for the petitioner company in W.P.No.2339 of 2018 and representing Sri Hanumantha Rao Bachina, learned counsel for the very same petitioner company in W.P.No.2391 of 2018, would however contend that when a notice under Section 148 of the Act of 1961 was issued on 31.03.2017, the petitioner company 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 letters dated 15.06.2017, the Assessing

[1] 2003 (1) SCC 72

Officer informed the Principal Officer of the petitioner company the reasons for reopening the assessment.

Though Sri P.A.Seshu, learned counsel, would deny receipt of these letters dated 15.06.2017, the record reflects that the said communications were 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 communications 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 petitions therefore fail on this short ground and are accordingly dismissed. We make it clear that this order shall not preclude the petitioner company from working out its 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

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