IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 28.01.2019

CORAM
THE HON'BLE MR. JUSTICE K.RAVICHANDRABAABU

W.P.No.2227 of 2019
and
WMP.Nos.2479 & 2481 of 2019

K.Manivannan ..Petitioner

vs.

1.The Commissioner
Income Tax Department
Chennai-600 034.

2.The Income Tax Officer
Non Corporate Ward 10(3)
Chennai-600 034. ... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, to call for the records relevant to the order passed by the 2nd respondent in Order No.ITBA/AST/S/143(3)/2018-19/1014624869(1)dated 28.12.2018 and consequently, demand notice in Notice No.ITBA/AST/S/156/2018-2019/1014624937(1) dated 28.12.2018 under Section 156 of the Income Tax Act, 1961 and quash the same is illegal, improper, unreasonable against the law and principles of natural justice.

For Petitioner : Mr.L.Chandrakumar
for Mrs.S.Sujatha

For Respondents : Mr.Rajkumar Jabhak
standing counsel

O R D E R

Mr.Rajkumar Jabhak, learned standing counsel takes notice for the respondents. By consent of the parties, the main writ petition is taken up for final disposal at the admission stage itself.

2. This writ petition is filed challenging the order of assessment dated 28.12.2018 passed under Section 143(3) of the Income Tax Act, 1961.

3. Heard Mr.L.Chandrakumar, learned counsel for the petitioner and Mr.Rajkumar Jabhak, learned standing counsel for the respondents.

4. The main ground of the challenge against the impugned assessment is that when the petitioner was called upon to appear on 30.01.2019 in pursuant to the notice issued under Section 274 r/w Section 271(1)(c) of the IT Act, 1961, the impugned assessment order cannot be passed, even before concluding the hearing on 30.01.2019. Therefore, it is contended that the impugned assessment order cannot be sustained.

5. On the other hand, the learned standing counsel for the respondents submitted that the said notice issued to the petitioner is in respect of penalty proceedings under Section 271(1)(c) of the IT Act, 1961 and therefore, issuance of such notice and calling upon the petitioner to appear on 30.01.2019 cannot be a ground to interfere with the assessment order passed on 28.12.2018, fixing the income and tax liability.

6. There is no dispute to the fact that the impugned assessment order has not dealt with the penalty aspect. Admittedly, a separate proceeding was initiated by issuing a notice to the petitioner and calling upon him to appear on 30.01.2019 for determining the penalty liability. If the petitioner is aggrieved against the present impugned assessment order fixing the assessable income and the tax liability, if any, it is for him to challenge the same by way of filing a regular appeal by canvassing all the points raised before this Court. Needless to say that the points raised in this writ petition against the assessment order are factual in nature, which have to be thus considered and decided only by the next fact finding authority. Therefore, I find that the present writ petition is not maintainable as the petitioner can avail an effective alternative remedy by filing an appeal before the next fact finding authority viz., First Appellate Authority.

7. Accordingly, without expressing any view on the merits of the contentions raised in this writ petition, the same is disposed of, by granting liberty to the petitioner to file such an appeal within a period of two weeks from the date of receipt of a copy of this order. If any such appeal is filed by complying with other statutory requirements, the same shall be considered and decided by the Appellate Authority on merits and in accordance with law without reference to the period of limitation. No costs. Connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1.The Commissioner
Income Tax Department
Chennai-600 034.

2.The Income Tax Officer
Non Corporate Ward 10(3)
Chennai-600 034.

+2ccs to Mr.S.Sujatha, Advocate, S.R.No.6397
+1cc to Mr.Rajkumar Jhabakth, Advocate, S.R.No.6888

W.P.Nos.2227 of 2019

rrs 13/02/2019