

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 08.08.2019

Coram

THE HONOURABLE MR. JUSTICE M.SUNDAR

W.P.No.23222 of 2019
and WMP No.22911 of 2019

B.Muralidhar

... Petitioner

vs.

1. Deputy Commissioner of Income Tax
Corporate Circle - I, Room No.611
Wanaparthi Block, 6th Floor,
Aayakar Bhavan, Mahatma Gandhi Road
Nungambakkam, Chennai - 600 034.

2. Tax Recovery Officer
Income Tax Department
No.537, 5th Floor, C Block IT Towers
A.C.Gaurds, Hyderabad.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus, calling for the records relating to the order of the first respondent herein, in AAACK3018P/Corp. Cir1 (1)/DCIT/179/2018-19 dated 24.01.2019 for the Assessment Years 1999-2007 in the case of the petitioner; quash the same and direct the First respondent to undertake the assessment on merits; and pass such further or other order as this Hon'ble Court deems fit and proper and render justice.

For Petitioner : Mr.Amrith Bhargav

For Respondents : Ms.Hema Muralikarishnan,
Senior Panel Counsel (Income Tax)

O R D E R

Mr.Amrith Bhargav, learned counsel on record for writ petitioner is before this Court. Ms.Hema Murali Krishnan, learned Senior Panel Counsel (Income Tax), who accepts notice on behalf of both the respondents is also before this Court.

2. With consent of learned counsel on both sides, main writ petition is taken up, heard out and is being disposed of.

3. Subject matter of main writ petition arises under 'Income Tax Act 1961', ('IT Act' for brevity).

4. Short facts shorn of micro details/particulars are that a company, which goes by the name 'A & G Projects and Technologies Ltd.', previously known as 'K & M Projects and Technologies Ltd.', (hereinafter 'said company' for the sake of brevity, clarity and convenience) is an assessee under the IT Act and writ petitioner was a share holding Director on the Board of the said company.

5. With regard to eight successive assessment years viz., 1999-2000 to 2006-07, first respondent commenced proceedings against the writ petitioner, who is a natural person qua what according to the first respondent is tax liability of said company, which is a juristic person. This exercise was commenced by the first respondent by taking recourse to Section 179 of IT Act. For the sake of convenience and clarity, this Court deems it appropriate to extract Section 179 of IT Act and the same reads as follows:

'179. Liability of directors of private company in liquidation

'[(1)] Notwithstanding anything contained in the Companies Act, 1956 (1 of 1956), [where any tax due from a private company in respect of any income of any previous year or from any other company in respect of any income of any previous year during which such other company was a private company] cannot be recovered, then, every person who was a director of the private company at any time during the relevant previous year shall be jointly and severally liable for the payment of such tax unless he proves that the non-recovery cannot be attributed to any gross neglect, misfeasance or breach of duty on his part in relation to the affairs of the company.

[(2). Where a private company is converted into a public company and the tax assessed in respect of any income of any previous year during which such company was a private company cannot be recovered, then, nothing contained in sub-section (1) shall apply to any person who was a director of such private company in relation to any tax due in respect of any income of such private company assessable for any assessment year commencing before the 1st day of April, 1962].'

6. As part of these proceedings, the first respondent inter alia issued a 'show cause notice dated 22.10.2018' ('SCN' for brevity) and the writ petitioner sent a detailed reply dated 30.11.2018.

7. First respondent, after considering the detailed reply of the writ petitioner to the SCN, besides several other relevant documents and files, passed an order 'dated 24.01.2019, bearing Reference No.AAACK3018P/Corp. Cir 1(1)/DCIT/179/2018-19 (hereinafter 'impugned order' for the sake of brevity, clarity and convenience).

8. Vide impugned order, first respondent held that the writ petitioner, a natural person, is jointly and severally liable (qua income tax liability) along with said company, the tax liability and penalty was quantified at little over Rs.29.61 crores. Rs.29,61,27,320/- to be precise.

9. Assailing the impugned order, instant writ petition has been filed.

10. Notwithstanding various averments made in the affidavit filed in support of the instant writ petition and notwithstanding various grounds raised/contentions urged in the affidavit filed in support of the writ petition, Mr.Amrith Bhargav, learned counsel for writ petitioner submitted that the writ petitioner who is a natural person, who was no doubt a share holding Director on the Board of the said company submitted his resignation from said company on 05.01.1995, said company vide a resolution dated 15.01.1995 accepted the same and the same was recorded in the files of jurisdictional Registrar of Companies on 01.03.1997. In other words, it is the specific say of learned counsel that the assessee is a juristic person i.e., said company whereas the tax liability and penalty has been mulcted on the writ petitioner a natural person, who resigned from the said company prior to the commencement of the first of the eight successive assessment years to which impugned order pertains. In other words, it is prior to 01.04.1999, is learned writ petitioner counsel's specific say.

11. A perusal of the impugned order reveals that writ petitioner has raised this very point in the aforesaid reply to the SCN and first respondent has dealt with the same in the impugned order. First respondent has relied on certain transactions and come to the conclusion that writ petitioner is liable under Section 179 of IT Act rejecting the aforesaid plea of the writ petitioner. Be that as it may, considering the nature of the order, which this Court now proposes to pass, this Court refrains itself from expressing any opinion or view on this plea. The reason is, this Court proposes to relegate the

writ petitioner to alternate remedy.

12. Ms.Hema Muralikrishnan, learned Revenue counsel, who has accepted notice on behalf of both the respondents pointed out that an alternate remedy qua impugned order is available to the writ petitioner. According to learned Revenue Counsel, it is open to the writ petitioner to file a revision under Section 264 of IT Act to jurisdictional Principal Commissioner i.e., 'Principal Commissioner of Income Tax 1, Chennai' (hereinafter 'said Revisional Authority' for clarity and convenience)

13. A perusal of said provision i.e., Section 264 of IT Act reveals that said Revisional Authority has powers to enquire into the correctness or otherwise of the impugned order and said Revisional Authority has powers which includes powers to make orders which are not prejudicial to the assessee. Therefore, it is clear that under Section 264 of IT Act, writ petitioner has an alternate remedy by way of a statutory revision under Section 264 of IT Act to said Revisional Authority.

14. This takes us to the question of alternate remedy.

15. The rule of alternate remedy no doubt is a self imposed restraint by Courts exercising writ jurisdiction. In other words, rule of alternate remedy is not a rule of compulsion, but it is a rule of discretion. Be that as it may, with regard to rule of alternate remedy, one important case law of the Hon'ble Supreme Court is Dunlop India case [Assistant Collector of Central Excise, Chandan Nagar, West Bengal vs. Dunlop India Ltd. and ors.] reported in (1985) 1 SCC 260 and the relevant paragraph is Paragraph 3 and the same reads as follows:

'3.....Article 226 is not meant to short circuit or circumvent statutory procedures. It is only where statutory remedies are entirely ill-suited to meet the demands of extraordinary situations, as for instance where the very vires of the statute is in question or where private or public wrongs are so inextricably mixed up and the prevention of public injury and the vindication of public justice require it, that recourse may be had to Article 226 of the constitution. But then the Court must have good and sufficient reason to bypass the alternative remedy provided by statute. Surely matters involving the revenue where statutory remedies are available are not such matters. We can also take judicial notice of the fact that the vast majority of the petitions under Article 226 of the constitution are filed solely for the

purpose of obtaining interim orders and thereafter prolong the proceedings by one device or the other. This practice needs to be strongly discouraged.'

(underlining made by this Court to supply emphasis and highlight)

16. Post Dunlop India case, in Satyawati Tandon Case [United Bank of India Vs. Satyawati Tondon and others reported in (2010) 8 SCC 110], Hon'ble Supreme Court held that when it comes to cases pertaining to tax, cess etc., rule of alternate remedy should be applied with utmost rigour.

17. This Satyawati Tandon principle was subsequently reiterated by Hon'ble Supreme Court in K.C.Mathew case [Authorized Officer, State Bank of Travancore Vs. Mathew K.C. reported in (2018) 3 SCC 85], relevant paragraph in K.C.Mathew case is Paragraph 10 and the same reads as follows:

'10. In Satyawati Tondon the High Court had restrained further proceedings under Section 13(4) of the Act. Upon a detailed consideration of the statutory scheme under the SARFAESI Act, the availability of remedy to the aggrieved under Section 17 before the Tribunal and the appellate remedy under Section 18 before the Appellate Tribunal, the object and purpose of the legislation, it was observed that a writ petition ought not to be entertained in view of the alternate statutory remedy available holding: (SCC pp.123 & 128, Paras 43 & 55)

"43. Unfortunately, the High Court overlooked the settled law that the High Court will ordinarily not entertain a petition under Article 226 of the Constitution if an effective remedy is available to the aggrieved person and that this Rule applies with greater rigour in matters involving recovery of taxes, cess, fees, other types of public money and the dues of banks and other financial institutions. In our view, while dealing with the petitions involving challenge to the action taken for recovery of the public dues, etc., the High Court must keep in mind that the legislations enacted by Parliament and State Legislatures for recovery of such dues are a code unto themselves inasmuch as they not only contain comprehensive procedure for recovery of the dues but also envisage constitution of quasi-judicial bodies for redressal of the grievance of any aggrieved person. Therefore, in all such cases, the High Court must insist that before availing remedy

under Article 226 of the Constitution, a person must exhaust the remedies available under the relevant statute.

55. It is a matter of serious concern that despite repeated pronouncement of this Court, the High Courts continue to ignore the availability of statutory remedies under the DRT Act and the SARFAESI Act and exercise jurisdiction under Article 226 for passing orders which have serious adverse impact on the right of banks and other financial institutions to recover their dues. We hope and trust that in future the High Courts will exercise their discretion in such matters with greater caution, care and circumspection.'

(Underlining made by Court to supply emphasis and highlight)

18. In the light of the aforesaid long line of authorities, this Court has no hesitation in holding that alternate remedy though a rule of discretion and not a rule of compulsion, has to be applied with utmost rigour when it comes to fiscal law statutes and in the instant case it applies with all force for two reasons. First reason is, though it is a rule of discretion, Court would interfere on the teeth of alternate remedy only when it falls within the exceptions set out in the long line of authorities. Those exceptions are, (a) lack of jurisdiction on the part of the Authority passing the order, (b) violation of principles of natural justice, (c) a well settled position of law being disregarded and (d) alternative remedy being ineffectual or not efficacious. To be noted, this adumbration of exceptions is not exhaustive, but is only a broad outline which is imperative for appreciating the instant order. The instant case does not fall under any of the exceptions. The other reason is, a perusal of SCN, reply and impugned order reveals that the matter turns heavily on factual disputations. As already alluded to supra, a perusal of Section 264 of IT Act makes it clear that writ petitioner has an effective and efficacious alternate remedy as the said Revisional Authority has powers to pass orders which are not prejudicial to the assessee by revising the impugned order. This position is reiterated by learned Revenue counsel.

19. This takes us to the time frame prescribed under Section 264 of IT Act. Time frame prescribed is under sub-section (3) of Section 264 of IT Act and the writ petitioner has to file revision within one year from the date on which the impugned order was communicated to the writ petitioner. From the narrative thus far, it comes to light that the impugned order is dated 24.01.2019 and learned counsel for writ

petitioner submits, on instructions, that it has been served on/communicated to the writ petitioner on 31.01.2019. Therefore, it is clear that the writ petitioner is well within the time to file a revision under Section 264 of IT Act before said Revisional Authority.

20. It is open to the writ petitioner to file a statutory revision under Section 264 of IT Act to said Revisional Authority seeking revision of the impugned order and if the writ petitioner chooses to avail alternate remedy, said Revisional Authority shall entertain the revision and dispose of the same on its own merits and in accordance with law.

21. This Court also notices that time frame has been prescribed for disposal of such revision and the same is adumbrated in sub-Section (6) of Section 264 of IT Act, which reads as follows:

'(6) On every application by an assessee for revision under this sub-section, made on or after the 1st day of October 1998, an order shall be passed within one year from the end of the financial year in which such application is made by the assessee for revision'.

22. It is also noticed that the said Revisional Authority viz., the Principal Commissioner of Income Tax-1, Chennai has not been arrayed as one of the respondents and therefore, Revenue Counsel is directed to communicate this order to the said Revisional Authority under cover of a suitable letter. Registry is also directed to communicate a copy of this order to the said Revisional Authority viz., Principal Commissioner of Income Tax-1, Chennai having office at Aayakar Bhavan, 121, Uthamar Gandhi Road, Nungambakkam, Chennai - 600 034.

23. This writ petition is disposed of preserving the rights of the writ petitioner to avail alternate remedy by way of a statutory revision under Section 264 of IT Act. Though obvious, it is made clear that all contentions raised by the writ petitioner are left open and can be raised before the statutory Appellate Authority. It is also made clear that such a course is being adopted as perusal of the impugned order and reply to the SCN reveals that it turns heavily on facts as already alluded to supra. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

24. After the order is passed, learned counsel on record for writ petitioner requests that the original impugned order being order dated 24.01.2019 made by the first respondent may please be returned to the writ petitioner's counsel to enable the writ petitioner to avail the alternate remedy. Registry is directed to return the original impugned order being order dated 24.01.2019 bearing reference No. AAACK3018P/Corp. Cir1(1)/

DCIT/179/2018-19 made by the first respondent forthwith to the counsel on record for writ petitioner under due acknowledgement.

25. With the above observations, these writ petitions are disposed of. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-VIII)

//True Copy//

Sub Assistant Registrar

vsm

To

- 1.The Deputy Commissioner of Income Tax
Corporate Circle - I, Room No.611
Wanaparthi Block, 6th Floor,
Aayakar Bhavan, Mahatma Gandhi Road
Nungambakkam, Chennai - 600 034.
- 2.The Tax Recovery Officer
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- 3.The Principal Commissioner of Income Tax-1,
Aayakar Bhavan,
121 Uthamar Gandhi Road,
Nungambakkam, Chennai - 600 034.

+1cc to Ms.Hema Muralikarishnan, Advocate, S.R.No.68367

NRJK(CO)
CB(20/09/2019)

W.P.No.23222 of 2019

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