In the High Court of Judicature at Madras

Dated : 09.1.2019

Coram :

The Honourable Mr.Justice T.S.SIVAGNANAM

and

The Honourable Mr.Justice N.SATHISH KUMAR

Writ Appeal No.2854 of 2018 & CMP.No.23727 of 2018

M/s.Unifac Management Services (India) Private Limited, rep.by its Managing Director R.Saravanan ...Appellant

Vs

The Deputy Commissioner of Income Tax, Corporation Circle 3(2), Office of the Deputy Commissioner of Income Tax, Room No.414, 4th floor, Wanaparthy Block, Aayakar Bhavan, No.121, MG Road, Chennai-34. ...Respondent

APPEAL under Clause 15 of the Letters Patent against the order dated 23.10.2018 made in W.P.No.5264 of 2018.

Prayer in W.P.No.5264 of 2018:
Writ Petitions under Article 226 of the Constitution of India for issuance of a Writ of Certiorari to Call for the records relating to respondent's order under Section 143(3) of the Income Tax Act dated 29.06.2017 in respect of the petitioner and consequential letter of the respondent dated 16.2.2018 and quash the same.

For Appellant : Mr.R.Sakthivel
For Respondent : Mr.J.Narayanasamy, SSC

Judgment was delivered by T.S.SIVAGNANAM,J

We have heard Mr.R.Sakthivel, learned counsel for the appellant and Mr.J.Narayanasamy, learned Senior Standing Counsel accepting notice for the respondent.

2. This appeal is directed against the order passed in W.P.No.5264 of 2018 dated 23.10.2018.

3. In the said writ petition, the appellant challenged the order of assessment under Section 143(3) of the Income

Tax Act, 1961 (for short, the Act) dated 29.6.2017. The learned Single Judge dismissed the said writ petition on merits. Admittedly, as against the order of assessment under Section 143(3) of the Act, an appeal lies to the Commissioner of Income Tax (Appeals) [for brevity, the CIT (A)] in terms of Section 246A of the Act. In our considered view, the appellant should not have by-passed the remedy, as the issues involved in the instant case are mixed questions of fact and law, which, obviously, a Writ Court cannot go into.

4. The learned counsel for the appellant has attempted to persuade us to entertain the appeal by referring to the decision of a Division Bench of this Court in the case of CIT Vs. M/s.Industrial Security & Intelligence India Private Limited [TCA.Nos.584 and 585 of 2013 dated 24.7.2015].

5. Our prima facie view is that a writ petition is not maintainable and the appellant ought to have pursued the appeal remedy provided under the Act. Furthermore, without considering the factual position, the law cannot be applied.

6. Faced with this situation, Mr.K.Sakthivel, learned counsel for the appellant seeks permission to withdraw the writ petition and requests that the appellant may be granted time to avail the appeal remedy before the CIT(A). He has also made an endorsement in the bundle today to that effect.

7. We have heard Mr.J.Narayanasamy, learned Senior Standing Counsel for the Revenue on the above submission.

8. In our considered view, the question relating to maintainability is an issue between the appellant/writ petitioner and the Court. Therefore, the Court will be well justified in refusing to entertain the matter, for which, the concession or consent of the respondent is unnecessary.

9. Considering these facts, we grant permission to the appellant to withdraw the said writ petition namely W.P.No.5264 of 2018 as well as this appeal namely W.A.No.2854 of 2018. We also grant liberty to the appellant to file the appeal before the CIT(A) having jurisdiction over the matter. Accordingly, the writ petition as well as the writ appeal are dismissed as withdrawn. We grant 30 days' time from the date of receipt of a copy of this judgment to file the appeal before the CIT(A) after taking note of the fact that immediately after the assessment was over and the notice was received, the appellant moved the Writ Court. We make it clear that in the event of filing of

an appeal by the appellant before the CIT(A), the Appellate Authority shall entertain the appeal without reference to the question of limitation and decide the same on merits and in accordance with law without, in any manner, influenced by any of the observations made by the learned Single Judge in the said writ petition. It is also made clear that the findings rendered by the learned Single Judge in his order dated 23.10.2018 will not affect the rights of the appellant in pursuing the appeal before the CIT(A) if such appeal is filed within a period of 30 days from the date of receipt of a copy of this judgment. No costs. Consequently, the connected CMP is also dismissed.

Sd/-
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

To
The Deputy Commissioner of Income Tax, Corporation Circle 3 (2), Office of the Deputy Commissioner of Income Tax, Room No.414, 4th floor, Wanaparthy Block, Aayakar Bhavan, No.121, MG Road, Chennai-34.

+1cc to Mr. R.Sakthivel, Advocate SR.No. 2362
RS

WA.No.2854 of 2018 &
CMP.No.23727 of 2018

A.SK(25/02/2019)