BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : **05.09.2019**
CORAM:
THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
and
THE HONOURABLE MRS.JUSTICE R.THARANI
W.A.(MD)No.906 of 2019
and
C.M.P.(MD)No.8157 of 2019

Francis Maria Selvaraj ... Appellant/Appellant

Vs.

Assistant Commissioner of Income Tax,
Circle-1, 1st Floor, Popular Buildings,
Mead Street, Nagercoil Range,
Nagercoil-629 001,
Kanyakumari District. ..Respondent/Respondent

PRAYER: Writ Appeal is filed under Clause 15 of the Letter Patent Act, to set aside the order passed in W.P.(MD)No.1658 of 2018 dated 09.07.2019.

Prayer in WP(MD). 1658/ 2018 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue Writ of Certiorari calling for the records on the file of the Respondent in his impugned proceedings made in PAN : ACSPM0119N for the Assessment Year 2015-16 under section 143 (3) of the Income Tax Act, 1961 dated 28.12.2017 quash the same as illegal and contrary to the scheme of the Act.

For Appellant : Mr.J.Prasanna Kumar

JUDGMENT

[Judgment of this Court was made by **T.S.SIVAGNANAM, J.**]

Heard Mr.J.Prasanna Kumar, learned counsel appearing for the appellant.

2. This appeal is directed against the order made in W.P.(MD) No.1658 of 2018 dated 09.07.2019. The writ petition was filed challenging the order of assessment passed in terms of the Income Tax Act, 1961 (in short 'Act') dated 28.12.2017 for the assessment year 2015-2016. The assessment was scrutiny assessed under Section 143(3) of the Act.

3. In the counter affidavit filed by the respondent in the writ petition, a specific plea has been raised stating that the writ petition is not maintainable and if the assessee aggrieved by an order of assessment, the remedy available to the assessee is to file

an appeal under Section 256 of the Act. However, the writ Court proceeded to take a decision on merits, which in our considered view should not have been done, since an alternative remedy under the Income Tax Act is an prescribed procedure to be availed by the assessee.

4. The appellant / assessee has not established as to why the alternative remedy was not resorted to. In the absence of any justification to bypass the remedy, the writ petition could have been dismissed on the ground of maintainability. This would be sufficient for us to dismiss the appeal. But however, since the learned single Bench has rendered finding on the merits of the matter, it requires factual appraisal. We do not wish to curtail the assessee's right to purse the appellate remedy available under the Act. For the above reasons, we confirm the order passed by the learned Single Bench not for the reasons set out by the learned Single Bench, but on the ground that the writ petition is not maintainable as against the assessment order. Accordingly, this Writ Appeal stands dismissed. However, we give liberty to the appellant to file an appeal before the Commissioner of Income Tax, Madurai within a period of fifteen days from the date of receipt of a copy of this order. If the appeal is presented within such time, the Commissioner of Income Tax shall not reject the appeal on the ground of limitation and decide the appeal on its own merits and in accordance with law. In the light of such liberty granted, the findings recorded by the learned single Bench in the impugned order stand vacated. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

Sub Assistant Registrar(CS)

To

Assistant Commissioner of Income Tax,
Circle-1, 1st Floor, Popular Buildings,
Mead Street, Nagercoil Range,
Nagercoil-629 001, Kanyakumari District.

+1 CC to Mr.F.DEEPAK, Advocate SR-85517.
+1 CC to M/s.S.SRIMATHY, Advocate SR-85526.

ORDER MADE IN
W.A.(MD)No.906 of 2019
05.09.2019

CS(20.09.2019) 2P 4C