BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 27.03.2019

CORAM:

THE HONOURABLE DR. JUSTICE VINEET KOTHARI
and
THE HONOURABLE MRS.JUSTICE T.KRISHNAVALLI

W.A.(MD) No.981 of 2011
AND
M.P.(MD) Nos.1 and 2 of 2011
in
WP(MD)No.8062 of 2011

M/s.Karandhai Tamizh Sangam,
1922 Seshaiyer Sastriyar Road,
Karandhai, Thanjavur,
rep. by its Secretary ... Appellant/ Petitioner

-vs-

1.The Commissioner of Income Tax-II,
No.44, Williams Road,
Cantonment,
Tiruchirapalli – 620 001.

2.The Joint Commissioner of Income Tax,
Thanjavur Range,
100, Nanjikottai Road,
Thanjavur – 6.

3.The Income Tax Officer,
Ward 1(i)
100, Nanjikottai Road,
Thanjavur – 6. ... Respondents / Respondents

PRAYER: Appeal is filed under Clause 15 of Letters Patent, to set aside the order dated 24.08.2011 in W.P.(MD) No.8062 of 2011 on the file of this Court.

Prayer in WP(MD). 8062/ 2011 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a WRIT OF CERTIORARIFIED MANDAMUS, to call for the records of the Petitioner Society/Trust on the file of the First Respondent to quash the impugned order dated 11-08-2010 served to the Petitioner on 07-07-2011 issued in Notification No.4/2010-11 read with C.No.7089/CIT/II/TRY/2010-11 in transferring the assessment jurisdiction from Deputy Commissioner of Income Tax, Circle I, Thanjavur to the Joint Commissioner of Income Tax, Thanjauvr Range, Thanjavur for framing assessments for the

Assessment Years 2004-05 to 2009-10 by the 2nd Respondent and consequently direct the 1st Respondent to maintain the jurisdiction with 3rd Respondent.

For Petitioner : No Appearance

For Respondents : Mrs.S.Srimathy, learned standing counsel

COMMON JUDGEMENT

[Judgment of the Court was made by **DR.VINEET KOTHARI, J.]**

No appearance for the appellant/Assessee. Heard Mrs.S.Srimathy, learned Standing Counsel appearing for the Respondents/Revenue.

2. This writ appeal is directed against the order passed by the learned Single Judge dismissing the writ petition filed by the petitioner/Assessee M/s.Karandhai Tamizh Sangam, challenging the transfer of Assessment Proceedings by the Commissioner of Income Tax, from the Deputy Commissioner of Income Tax, Circle I, Thanjavur, to another Authority in Thanjavur itself viz., the Joint Commissioner of Income Tax, Thanjavur Range.

3.The learned Single Judge dismissed the writ petition by the order under appeal dated 24.08.2011, following the decision of the Constitution Bench of the Hon'ble Supreme Court in Kashiram Aggarwalla Vs. Union of India and others reported in AIR 1965 Supreme Court 1028. The relevant portion of the order passed by the learned Single Judge, in this regard, is quoted below for ready reference.

> "14. In view of the decision of a Five Judges Bench of the Honourable Supreme Court referred to above, the contention of the petitioner, clearly has no legal basis. It clearly establishes the fact that the writ petition is filed with mala fide intention of protracting the assessment proceedings by indulging in meaningless litigation, knowing fully well that the decision of the Five Judges Bench of the Honourable Apex Court does not support the petitioner's plea. In fact, the case of Kashiram Aggarwalla case (AIR 1965 Supreme Court 1028) is referred to in the Honourable Apex Court decision of Ajantha Industries reported in (1976) 102 ITR 281 (SC), relied upon by the petitioner's counsel. Kashiram Aggarwalla case was held to be inapplicable to the facts of the Ajantha Industries case by the Honourable Supreme Court. The learned counsel for petitioner when asked as to why he is not referring to the decision of the Five Judges Bench reported in AIR 1965 Supreme Court 1028 which is to the point in issue, he pleaded that he does not rely

on it. This only shows the deliberate intention to misinterpret the law for protracting the assessment proceeding under some pretext.

15. One other contention raised by the learned Counsel for the petitioner is that the transferring officer is not vested with the power specifically and therefore, the proceedings are bad.

16. This contention appears to be totally misconceived as the definition of the Assessing Officer under Section 2 7(A) includes the Joint Commissioner of Income Tax. Therefore, the said contention is rejected as it is without any legal basis.

17. The learned Counsel for the petitioner further pleaded that the Joint Commissioner of Income Tax, Trichy, is holding additional charge of Thanjavur District and is not a Joint Commissioner of Thanjavur regular and, therefore, it cannot be treated as a transfer within the same city.

18. This argument appears to be a fallacy as the transfer of the file is a transfer from one Assessing Office to another Assessing Office of the same city, locality or place. The post is be held by a person who is directed to take charge of the said post. The petitioner's plea that the in-charge officer has no power, cannot be countenanced as the transfer is not to the individual officer but to the Assessing Office of the particular city, place or locality. Therefore, this contention is also rejected as devoid of merits. No other plea was made or argued.

19. In the result, finding no merits in the plea taken, the Writ Petition is dismissed. Consequently, the connected Miscellaneous Petition is dismissed.

20. Since the entire exercise of filing writ petition is to stall the proceedings of the Department without there being any legal basis that too knowing fully well that the provision of law is clear with regard to transfer in terms of Section 127(3) of the Act, the writ petitioner deserves to be mulcted with some costs as valuable time of Court is wasted to deal with a case with no legal basis and on untenable plea. The petitioner has filed this writ petition purely on technicalities to avoid or delay the assessment proceedings. This Court is therefore constrained to impose cost of Rs.5,000/-(Rupees Five Thousand only) on the petitioner to be paid to the Legal Services Authority, Madurai Bench of Madras High

Court, within fifteen days from the date of receipt of a copy of this order."

4.There is no stay granted by the Division Bench of this Court operating against the Revenue Department and since the writ petition was dismissed long ago, namely on 24.08.2011, in all probability, the Authority, to whom the Assessment Proceedings were transferred by the Commissioner of Income Tax, might have concluded the Assessment Proceedings. However, the learned counsel for the Respondents does not have the updated instructions in this regard.

5.Be that as it may, in view of the reasons given by the learned Single Judge for upholding the said transfer of Assessment Proceedings in the same City from one Authority to another, we are of the considered opinion that no interference by this Court is called for and therefore, the learned Single Judge is right in dismissing the writ petition filed by the Assessee. No prejudice, whatsoever, was pleaded or much less established by the Assessee in the present case, as against the transfer of the proceedings from one Authority to another. The Hon'ble Supreme Court has already put to rest the said controversy in the aforesaid decision and the learned Single Judge was, therefore, perfectly justified in dismissing the writ petition. We do not find any merit in the present appeal filed by the assessee and the same is liable to be dismissed.

6.Accordingly, this writ appeal is dismissed. There is no order as to costs. Consequently, connected miscellaneous petitions are closed. Since the Appellant/Assessee is not represented before the Court, a copy of this order may be communicated to the Assessee forthwith.

Sd/-
Assistant Registrar (CS-II)

/True Copy/

Sub Assistant Registrar

To
1.The Commissioner of Income Tax-II,
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COPY TO:

M/s.Karandhai Tamizh Sangam,
Rep.by its Secretary,
1922 Seshaiyer Sastriyar Road,
Karandhai, Thanjavur,
rep. by its Secretary

+1CC TO Mrs.S.Srimathy, Advocate, Sr No.57319

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AND
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Arul
MS/25.04.2019/5P.6C