IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.10.2020

CORAM

THE HON'BLE MR. JUSTICE P.D. AUDIKESAVALU

W.P. No. 36945 of 2004

Ratna Mohammed ... Petitioner

-vs-

1.Union of India rep by
the Secretary to Govt
Department of Revenue
Ministry of Finance and
Company affairs, New Delhi.

2.The Additional Director
Office of the Additional Director
of Income Tax (Vig II)
Govt of India,
121, Aayakar Bhavan
Nungambakkam High Road,
Chennai - 34.

3.The Special Director,
Enforcement Directorate
LOK Nayak Bhawan
6th Floor, New Delhi - 110003. ... Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, calling for the records connected with the Order No. ADCIT (AAK) MAS/ED/3/2004 (F.No. T4/70-m/93) dated 31.03.2004 on the file of the Second Respondent and quash the same.

For Petitioner : No Appearance

For Respondents: Mr. A.P. Srinivas (for R1 and R2)
Standing Counsel

Mr. Rajnish Pathiyil (for R3)

ORDER

(through video conference)

Heard Mr. A.P.Srinivas, Learned Standing Counsel for the First and Second Respondents and Mr. M.Swaminathan, Learned Counsel for the Third Respondent and perused the materials placed on record, apart from the pleadings of the parties.

2. There is no representation for the Petitioner when the matter is called today at 11.09 a.m. as well as the earlier hearings on 13.03.2020, 05.06.2020, 17.082020, 07.09.2020 and 21.09.2020.

3. The Writ Petition challenges the Order (Original) No. ADCIT (AAK) MAS/ED/3/2004 (F.No. T4/70-m/93) dated 31.03.2004 passed by the Additional Director of Income Tax (Vig-SZ II), Government of India, Chennai in the exercise of powers under Section 51 of the Foreign Exchange Regulation Act, 1973 read with the Adjudication Proceedings and Appeal Rules, 1974, and sub-section (3) & (4) of Section 49 of the Foreign Exchange Management Act, 1999, in which it has been mentioned as follows:-

> "(iii) An appeal against this Order shall lie with the Appellate Tribunal for Foreign Exchange, Ministry of Law, Justice & Company Affairs, Government of India, 4th Floor, 'B' Wing, Janpath (Indian Oil) Bhavan, Janpath, New Delhi – 110 001, after depositing the amount of penalty imposed, within 45 days from the date on which this Order is served (Refer Section 19 read with Section 49(5)(a) of the Foreign Exchange Management Act, 1999);"

There is no explanation of the Petitioner in the affidavit filed in support of the Writ Petition as to why the aforesaid statutory remedy has not been availed. In this context, it may be recapitulated here that the Hon'ble Supreme Court of India in Assistant Collector of Central Excise -vs- Dunlop India Limited [(1985) 1 SCC 260] has succinctly explained the legal position relating to the exercise of discretionary powers under writ jurisdiction 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 Article226 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. The practice certainly needs to be strongly discouraged.”

Having regard to that legal position, it is not possible to entertain the Writ Petition.

4. Accordingly, the Writ Petition is dismissed. Consequently, the connected Miscellaneous Petitions are closed. No costs.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

To

1.The Secretary to Government,
Union of India,
Department of Revenue,
Ministry of Finance and
Company affairs, New Delhi.

2.The Additional Director,
Office of the Additional Director,
of Income Tax (Vig II),
Govt of India,
121, Aayakar Bhavan,
Nungambakkam High Road,
Chennai - 34.

3.The Special Director,
Enforcement Directorate,
LOK Nayak Bhawan,
6th Floor, New Delhi - 110003.

+1cc to M/s.A.P.Srinivas, Advocate Sr.34091
+1cc to M/s.Rajnish Pathiyil, Advocate Sr.34266

W.P. No. 36945 of 2004

sai[co]
srg 06/11/2020