In the High Court of Judicature at Madras

Dated : 21.9.2020

Coram :

The Honourable Mr.Justice T.S.SIVAGNANAM
and
The Honourable Mrs.Justice V.BHAVANI SUBBAROYAN

Writ Appeal No.790 of 2020 & CMP.No.10344 of 2020

Jaganmohan ...Appellant

Vs

1.The Principal Commissioner of
Income Tax, Nungambakkam, Chennai-34.

2.The Assistant Commissioner of
Income Tax, Non Corporate Ward-3,
Nungambakkam,
Chennai-34.

3.The Income Tax Officer, Non
Corporate Ward-3,
Nungambakkam, Chennai-34. ...Respondents

APPEAL under Clause 15 of the Letters Patent against the order in W.P.No.3625 of 2019 dated 07.11.2019.

Writ Petition praying to call for the records of the 3rd respondent made in the assessment order dated 14.02.2018 for AY 2011-12 in so far as the Petitioner is concerned and to quash the same.

For Appellant : Mr.P.Ravi Shankar Rao

For Respondents : Mr.Prabu Mukund Arunkumar for
Mrs.Hema Muralikrishnan, SSC

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Judgment was delivered by T.S.Sivagnanam,J

We have heard Mr.P.Ravi Shankar Rao, learned counsel for the appellant and Mr.Prabu Mukund Arunkumar, learned counsel appearing on behalf of Mrs.Hema Muralikrishnan, learned Senior Standing Counsel accepting notice for the respondents.

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2. This writ appeal, filed by the appellant – writ petitioner, is directed against the order dated 07.11.2019 passed in W.P.No.3625 of 2019.

3. The said writ petition was filed by the appellant challenging the order of assessment passed under Section 144 read with Section 147 of the Income Tax Act (for short, the Act) for the assessment year 2011-12.

4. The appellant contended before the learned Single Judge that the notice under Section 148 of the Act was not served on the appellant and therefore, the entire proceedings were vitiated.

5. The Revenue resisted the said plea by contending that the notice was dispatched to the appellant – writ petitioner on 29.3.2018 from Teynampet Post Office through speed post and that the appellant could not contend that the notice under Section 148 of the Act was not issued. The Revenue also produced the proof before the learned Single Judge in support of their contention.

6. However, the learned Single Judge dismissed the said writ petition by observing that the appellant could not canvass the merits of assessment before a Writ Court without filing a regular appeal. Accordingly, without expressing any opinion on the merits of the matter, the said writ petition was disposed of by granting liberty to the appellant to file an appeal before the concerned Authority within a period of two weeks from the date of receipt of a copy of the said order. It was also made clear that on such filing of the appeal, the same should be considered on its own merits and in accordance with law without reference to the period of limitation.

7. Before us, the learned counsel for the appellant has assailed the correctness of the assessment order reiterating the stand taken before the learned Single Judge that though the appellant had been repeatedly seeking to furnish a copy of the alleged acknowledgment card, the same was never furnished to the appellant and that none of the letters written by the appellant was replied by the Assessing Officer. It is further submitted that the appellant raised a query under the Right to Information Act. However, the Department stated that the record was not available. It is also submitted that no credibility can be attached to the stand taken by the Department before the learned Single Judge.

8. Per contra, Mr.Prabu Mukund Arunkumar, learned counsel appearing on behalf of Mrs.Hema Muralikrishnan, learned Senior Standing Counsel accepting notice for the respondents submits

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that the notice was served in accordance with the procedure laid down under the Act, that a similar issue was considered by one of us (TSSJ), while sitting singly, in the decision in the case of Abab Offshore Ltd. Vs. DCIT, Corporate Circle I(1), Chennai [reported in (2017) 78 Taxmann.com 37 (Madras)] and that the learned Single Judge was right in rejecting the relief sought in the said writ petition.

9. After elaborately hearing the learned counsel for the parties, we are of the considered view that the learned Single Judge was fully justified in dismissing the said writ petition, as the appellant has got an effective alternate remedy by way of an appeal before the Commissioner of Income Tax (Appeals) concerned. The Income Tax Act, 1961, being a physical Statute, has provided for hierarchy of remedies under that and there is no justification for the assessee to bypass such an appellate remedy. The point canvassed before us as well as before the learned Single Judge is not a pure question of law, but a pure question of fact with the limits of law involved in it. Therefore, if the facts are in dispute, it is but appropriate for the appellant - assessee to avail the alternate remedy provided under the Act, as the Appellate Authority is entitled to re-appreciate the facts, call for records and then take a decision.

10. The Income Tax Act, 1961 also provides for a further remedy to the aggrieved party by way of an appeal before the Income Tax Appellate Tribunal and another remedy by way of an appeal before a Division Bench of this Court under Section 260A of the Act if a substantial question of law is to be decided in the matter. On going through the facts as set out in the said writ petition, we find that there is no ground for the appellant to bypass the appellate remedy. Though the learned counsel appearing on behalf of the respondent - Revenue has referred to the decision rendered by one of us (TSSJ), while sitting singly, in the case of Abab Offshore Ltd., we refrain from expressing anything on the merits of the matter, as we are inclined to confirm the order passed by the learned Single Judge, who had dismissed the said writ petition at the threshold on account of availability of an alternate remedy.

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11. For all the above reasons, the writ appeal is dismissed, the order dated 07.11.2019 passed in the said writ petition is confirmed and the appellant is directed to file the appeal before the concerned Commissioner of Income Tax (Appeals) within a period of 30 days from the date of receipt of a copy of this judgment and if the same is done, the concerned Commissioner of Income Tax (Appeals) is requested to entertain the appeal without reference to the question of limitation and take a

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decision on merits and in accordance with law. No costs. Consequently, the connected CMP is also dismissed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

RS

To

1.The Principal Commissioner of Income Tax,
Nungambakkam,
Chennai-34.

2.The Assistant Commissioner of Income Tax,
Non Corporate Ward-3, Nungambakkam,
Chennai-34.

3.The Income Tax Officer,
Non Corporate Ward-3,
Nungambakkam, Chennai-34.

Copy To

The Commissioner of Income Tax Appeals,
Rajaji Bhavan, Besant Nagar,
Chennai 90.

+1cc to Mr.Hemamuralikrishnan, Advocate, S.R.No. 30926

W.A.No.790 of 2020 &
CMP.No.10344 of 2020

MG(CO)
GN(15/10/2020)

सत्यमेव जयते
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