IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.11.2020

CORAM

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

W.P. No. 16554 of 2014
and
M.P. No. 1 of 2014

The Commissioner of Income Tax (Central),
7th Floor, Aaykar Bhavan,
Basheerbagh,
Hyderabad - 500 004.

... Petitioner

-vs-

1. Income Tax Settlement Commission Additional Bench,
640, Anna Salai,
Nandanam,
Chennai - 600 035.

2. L.Jaya Reddy

... Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, calling for the records on the file of the First Respondent in Settlement Application No. AP/HD/51/5/2012-13/IT dated 06.06.2013 and quash the same as illegal and restore the jurisdiction of the Assessing Officer in respect of the assessments for assessment years 2005-06 to 2011-12 of the Second Respondent.

For Petitioner : Mr. T.Pramod Kumar Chopda
For Respondents: Mrs. Hema Muralikrishnan,
Central Government Standing Counsel (for R1)
Mr. Udayarkar Rangarajan (for R2)

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O R D E R
(through video conference)

Heard Mr. T.Pramod Kumar Chopda, Learned Counsel for the Petitioner, Mrs. Hema Muralikrishnan, Learned Central Government Standing Counsel appearing for the First Respondent and Mr. Udayarkar Rangarajan, Learned Counsel for the Second Respondent and perused the materials placed on record, apart from the pleadings of the parties.

2. It is borne out from the materials placed on record that the Second Respondent is a resident of Hyderabad in the State of Telangana and aggrieved by the action taken against him by the Petitioner, whose office is also situated at Hyderabad in the State of Telangana, he made an application in Settlement Application No. AP/HD 51/5/2012-13/IT before the First Respondent, viz., Income Tax Settlement Commission Additional Bench, in which order dated 06.06.2013 has been passed and the same is assailed in this Writ Petition.

3. The reason stated by the Petitioner for having approached this Court instead of High Court of Telangana at Hyderabad is that the 'seat of authority' of the First Respondent is situated at Chennai within the territorial limits of jurisdiction of this Court. Even if it is assumed that in addition to the High Court of Telangana, this Court would also have territorial jurisdiction, the principle of forum conveniens would come into play as held by the decision of the Division Bench of this Court in C. Ramesh -vs- The Director General of Police (Order dated 06.06.2013 in W.P. (MD) No. 8790 of 2013) as follows:-

> "7. Exercise of jurisdiction is based on arising of the cause of action, either in whole or in part in any one of the said Revenue Districts. [See RAJASTHAN HIGH COURT ADVOCATES' ASSOCIATION Vs. UNION OF INDIA AND OTEHRS (2001 (2) SCC 294) and B.STALIN Vs. THE REGISTRAR, SUPREME COURT OF INDIA AND OTHERS (2012 (3) LW 489 (FB))].
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> 8. It should be remembered that the part of cause of action must be substantial in nature. The territorial jurisdiction of the Court is linked with the place of accrual of cause of action. [See U.P. RASHTRIYA CHINI MILL ADHIKARI PARISHAD, LUCKNOW Vs. STATE OF U.P. AND OTHERS (1995 (4) SCC 738)].
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> 9. Referring to KUSUM INGOTS & ALLOYS LTD. Vs. UNION OF INDIA (2004 (3) CTC 365), a Full Bench of this Court in SANJOS JEWELLERS Vs. SYNDICATE BANK, BANGALORE AND OTHERS (2007 (5) CTC 305), held as under:-
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> > "30. We must, however, remind ourselves that even if a small part of cause of action arises within the territorial jurisdiction of the High Court, the same by itself may not be considered to be a determinative factor compelling the High Court to decide the matter on merit. In appropriate cases, the Court may refuse to exercise its discretionary jurisdiction by invoking the Doctrine of forum conveniens. [See BHAGAT SINGH BUGGA Vs. DEWAN JAGBIR SAWHNEY, AIR 1941 CAL 670 : ILR (1941)

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1 CAL 490; MADANLAL JALAN Vs. MADANLAL, 1945 (49) CWN 357: AIR 1949 CAL 495; BHARAT COKING COAL LTD. Vs. JHARIA TALKIES & COLD STORAGE (P) LTD., 1997 CWN 122; S.S.JAIN & CO. Vs. UNION OF INDIA, 1994 (1) CHN 445, and NEW HORIZONS LTD. Vs. UNION OF INDIA, AIR 1994 DEL 126]."

10. Question of entertaining a lis disclosing a cause of action or part of cause of action is based on the averments contained in the affidavit etc. At that stage, the truth or otherwise of the averments need not be gone into. But, there must be necessary averments disclosing a cause of action, so that the Court can take cognizance of/entertaining the lis exposed in the petition for taking further action. [See OIL AND NATURAL GAS COMMISSION Vs. UTPAL KUMAR BASU AND OTHERS (1994 (4) SCC 711)].

11. A Court cannot arrogate/assume/confer upon itself a jurisdiction-territorial jurisdiction, when it has no such jurisdiction. Lack of jurisdiction to entertain a matter goes to the root of the matter, otherwise whatever action taken or orders passed by the Court becomes a nullity, it is non est and of no consequence at all resulting in wasting of precious public time. Courts are barred from indulging in hypothetic and academic exercises."

4. Having regard to the aforesaid legal position, there does not appear to be any justification to entertain the Writ Petition in this Court, which would not, however, preclude the Petitioner from filing fresh Writ Petition for the same relief before the High Court of Telangana. This view is fortified by the decisions of the Division Benches of this Court in M/s. Zeenath International Supplies -vs- Commissioner of Customs (Order dated 03.03.2014 in C.M.A. No. 1336 of 2006) and in Mulberry Silks Ltd., -vs- Settlement Commission (IT & WT) (Order dated 14.09.2020 in W.A. No. 717 of 2020). Though obvious, it is made clear that no view has been expressed by this Court on the correctness or otherwise on the merits of the controversy involved in the matter.

5. Accordingly, the Writ Petition is dismissed with the aforesaid clarifications. Consequently, the connected Miscellaneous Petition is closed. No costs.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

1. The Presiding Officer,
   Income Tax Settlement Commission Additional Bench,
   640, Anna Salai,
   Nandanam,
   Chennai - 600 035.

2. The Commissioner of Income Tax (Central),
   7th Floor, Aaykar Bhavan,
   Basheerbagh,
   Hyderabad - 500 004.

+1 CC to M/s. Hema Muralikrishnan, Advocate sr 36006.

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SSD(CO)
SP(27/11/2020)

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