BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 06.03.2020
CORAM:

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

W.P(MD)Nos.4821 & 4823 of 2020
and W.M.P(MD)Nos.4195 & 4196 of 2020

Vijikumar ... Petitioner in W.P(MD)No.4821 of 2020
Alamelu Chidambaram ... Petitioner in W.P(MD)No.4823 of 2020

Vs.

Assisstant Commissioner of Income Tax,
Circle-2(1),
Williams Road,
Tiruchirapalli. ... Respondent in both writ petitions

COMMON PRAYER : These Writ Petitions filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, calling for the records of the respondent dated 22.12.2019, and 23.12.2019, passed under Section 144 of the Income Tax Act for the assessment year 2017-2018 in PAN No.ADFPV6842H and PAN No.AACPC6230G respectively and quash the same.

In both writ petitions
For Petitioner : Mr.T.Vasudevan
For Respondent : Mr.N.Dilip Kumar
Standing Counsel

COMMON O R D E R

Since both the Writ Petitions are similar in nature, a common order is passed in both the Writ Petitions.

2.Both the writ petitions have been filed in the nature of Certiorari, when questioning the assessment order passed under Section 144 of the Income Tax Act and both for the year 2017 - 2018.

3.In the first writ petition namely, W.P.(MD).No.4821 of 2020, the Writ Petitioner, Vijikumar, questioning the PAN No.ADFPV6842H, is aggrieved by the assessment order, dated 22.12.2019 for the assessment year 2017-2018, whereby, in the order in original, the Assessing Officer had stated that the petitioner therein has been assessed to a total income of Rs.1,82,06,305/- and has accordingly, raised a demand for payment of tax.

4.In WP.(MD)No.4823 of 2020, the Writ Petitioner namely, Alamelu Chidambaram, the PAN No.AACPC6230G has again questioning the order of the Assessment Officer for the assessment year 2017 - 2018 passed under Section 144 of the Income Tax Act, whereby, the income of the said petitioner had been assessed at Rs.1,92,69,050/- and tax has been demanded on that income. It may not be proper for him to come into the facts of the case.

5.In the affidavit filed in support of both the writ petitions, both the Writ Petitioners namely, Vijikumar and Alamelu Chidambaram have stated that they have filed Appeals before the Commissioner of Income Tax.

6.The learned Counsel for the petitioners, however, urged this Court to consider these Writ Petitions even though appeals have been filed against the assessment orders, ground on which the learned Counsel seeks interference by this Court over the assessment orders and it has been stated in the assessment order that notice was served on the petitioners to call for explanation.

7. It is the contention of the petitioners that notice was not served in W.P.(MD) No.4821 of 2020. The learned Counsel for the petitioners have drawn attention of this Court, to the web page of the respondents and emphatically stated that it has not been uploaded and as such, there is violation of principles of natural justice. Though it was stated that the notice is dated 03.12.2019, till 08.12.2019 the copy of the notice was not uploaded and only on 15.12.2019 it was uploaded and thereafter, a representation was given on 16.12.2019. However, the assessment orders were passed on 22.12.2019 without reference to the explanation.

8.The learned Counsel also stated that the petitioner in W.P.(MD)No.4823 of 2020 is also faced with the same issue in that notice not been served, not uploaded and thereafter, when uploaded and being replied by the Writ Petitioner, the assessment orders came to be passed without considering the said reply.

9.On these grounds impugning that the orders suffers from violation of principles of natural justice, the learned Counsel urged this Court to interfere with the assessment orders and remit the matters back to the assessment Officer to once again pass an assessment order, after considering the issues raised in these Writ Petitions.

10.In this connection, the learned Counsel also relied on W.P.300 of 2020 in the case of the Bhavani Kudal Co-operative Urban Bank Ltd., Vs. The Assistant Commissioner of Income Tax, Erode, wherein, a learned Single Judge of this Court, by order, dated 09.01.2020, in circumstances very similar to that of the present case, according to the petitioner, this Court had quashed the assessment order and remitted the same back to the Assessment Officer to pass a fresh order.

11.The learned Counsel also relied on yet another judgment in W.P.(MD)No.1732 of 2020 in Salem Sree Ramavilas Chit Company Private Limited Vs. The Deputy Commissioner of Income Tax, Salem, wherein, the learned Single Judge, had pronounced orders on 04.02.2020. Again according to the learned Counsel, on a similar facts filed, questioning the assessment order had remitted the same for further action.

12.Unfortunately, in both the cases, one vital fact is not mentioned and that fact is whether the petitioners in those cases have filed regular appeal before the Commissioner of Income Tax. In the present case, very specifically in the affidavits the petitioners have stated that they have filed appeals before the Commissioner of Income Tax.

13.The learned Counsel for the petitioners stated in the grounds of appeal he has not raised the grounds now urged before this Court before the Appellate Authority. Therefore, it would only be appropriate that a direction is given to the petitioner to file the additional grounds now raised regarding the violation of principles of natural justice and a further direction is given to the Commissioner of Income Tax (appeals) to consider the same in the first instance and, if he finds that there is a violation of principles of natural justice, pass appropriate orders. If the Officers find that there is no violation of principles of natural justice, then the said Officer may proceed to examine the appeals. The additional grounds of the appeal will have to be filed before the Commissioner of Income Tax appeals on or before 17.03.2020. If it is filed within the said date, the Commissioner of Income Tax may take up those additional grounds for enquiry on or before 30.03.2020, but subject to availability of records and any other administrative reasons.

14.With the above observations, these writ petitions are disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

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Sub Assistant Registrar(CS)

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To

Assistant Commissioner of Income Tax,
Circle-2(1),
Williams Road,
Tiruchirapalli.

+1 CC to Mr.N.DILIP KUMAR, Advocate (SR-10581[F] dated 09/03/2020)

Common Order in
W.P(MD)Nos.4821 & 4823 of 2020
06.03.2020

MK (20.03.2020) 4P 3C