BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : **22.07.2020**

CORAM

THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN

AND

THE HONOURABLE MR.JUSTICE P.RAJAMANICKAM

W.A.(MD)No.481 of 2020
and
C.M.P.(MD)No.3455 of 2020
against WP(MD)No.5225 of 2020

Dr.S.Gurushankar ... Appellant/Petitioner

Vs.

1.The Commissioner of Income Tax,
(Appeals-19, Chennai)
Office of the Commissioner of
Income Tax (Appeals-19)
304, Investigation Buildings,
Mahathma Gandhi Road,
Nungambakkam, Chennai - 600034.

2.The Deputy Commissioner of Income Tax,
Central Circle-1,
Madurai (i/c).

3.Assistant Commissioner of Income Tax,
Central Circle - 1,
Madurai - 1. ... Respondents / Respondents

Prayer: Writ Appeal filed under Clause 15 of Letters Patent, against the order of this Court made in W.P.(MD) No.5225 of 2020 dated 12.03.2020.

Prayer in WP(MD). 5225 of 2020 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court Calling for the records of the third respondent in his assessment order dated 31.12.2019 in No.ITBA/AST/S/143(3)/2019-20/1023534727(1) in so far as the computation made under clauses 18 to 21 of the computation sheet (No.ITBA/AST/S/2013/2019-20/1023534824(1) attached to the said assessment order passed by the 3rd respondent for the assessment year 2017-2018.

For Appellant : Mr.K.Subramaniam
Senior Counsel
for Mr.S.Ramesh

For Respondents : Mrs.S.Srimathy
Special Government Pleader
for the Respondents

J U D G M E N T

(Judgment of the Court was delivered by **M.SATHYANARAYANAN, J.**)

By consent, the Writ Appeal is taken up for final disposal.

2. Mr.K.Subramaniam, learned Senior Counsel assisted by Mr.S.Ramesh, learned counsel appearing for the petitioner has invited the attention of this Court to the typed set of papers and would submit with regard to the invocation of Section 115-JC of the Income Tax Act, 1961, three writ petitions in W.P.(MD).Nos. 107, 108 and 109 of 2019 were filed. The learned Single Judge, vide interim order, dated 04.01.2019 passed in W.M.P.(MD).Nos.80, 81 and 82 of 2019, had granted interim stay and despite the subsistence of stay, the third respondent had issued the computation sheet and Clause Nos. 18, 19, 20 and 21 had computed some amount based upon Section 115-JC of the Income Tax Act, 1961 and therefore, the appellant/writ petitioner was constrained to make a challenge to the said Clauses.

3. The learned Senior Counsel appearing for the appellant/writ petitioner has drawn the attention of this Court to the paragraph No.32 of the affidavit filed in support of C.M.P.(MD).No.3455 of 2020 filed this appeal as to the prayer for passing over the matter so as to enable them to get a copy of the rejection of the rectification application as well as a copy of the appeal filed against the main assessment order from the Chartered Accountant and it is further stated that the Court had declined the said request and proceeded to pass orders even on the merits of the order.

4. The learned Senior Counsel would submit that challenging the impugned Clauses in the computation sheet on the file of the third respondent, a statutory appeal has also been filed before the jurisdictional Commissioner of Income Tax (Appeals) and in the light of the findings given by the learned Single Judge in the impugned order, dismissing the writ petition, the appeal would all probably becomes redundant and prays for setting aside the said portion of the impugned order with a direction, directing the Commissioner of Income Tax (Appeals) to entertain the appeal, if

the papers are otherwise in order and give a disposal on merits and in accordance with law at on early date.

5. This Court heard the submissions of Mrs.S.Srimathy, learned Special Government Pleader appearing for the respondents 1 to 3.

6. In the light of the submissions made by the learned Senior Counsel appearing for the appellant/writ petitioner/assessee praying for appropriate orders, this Court has carefully considered the rival submissions and also perused the materials placed before it.

7. It is relevant to extract paragraph No.32 of the affidavit filed in C.M.P.(MD) No.3455 of 2020 in WA (MD).No.481 of 2020:-

> *"32. ... I state that the Junior Counsel, Senthil, who assisted the Counsel on record and also the Senior Counsel in the present writ petition and who was present in the Court Hall when the above writ petition was taken up for hearing for admission on 12.03.2020 has filed a supporting affidavit stating that the Senior Counsel requested the Honourable Court to pass over the matter in 2.15 p.m., to enable him to get the copy of the rejection of the rectification application as well as the copy of the appeal filed against the main assessment order from the petitioner's Chartered Accountant and produce it before the Court at 2.15 p.m., but, however, the Court declined to grant the said prayer for short pass over and has recorded the finding that the said fact has been suppressed."*

8. A perusal of the impugned order which is the subject matter in the writ appeal, the learned Single Judge has proceeded to discuss the matter and arrived at the findings on merits from the paragraph Nos.15 to 32 and in the light of the reasons assigned in the said paragraphs, has dismissed the Writ Petition in W.P.(MD) No.5225 of 2020 vide impugned order, dated 12.03.2020.

9. In the light of the above said averments made in C.M.P. (MD).No.3455 of 2020 in Writ Appeal (MD).No.481 of 2020 and also in the light of the fact that the statutory appeal has also been filed before the first respondent, this Court is of the considered view that the findings given in paragraph Nos.15 to 32, are liable to be set aside.

10. In the result, the **Writ Appeal is partly allowed** and the findings given by the learned Single Judge in paragraph Nos.15 to 32 in the impugned order dated 12.03.2020, passed in

W.P.(MD) No.5225 of 2020, are set aside, with a further direction, directing the first respondent to entertain the appeal dated 06.01.2020, if the papers are otherwise in order and give a disposal in accordance with law as expeditiously as possible. No costs. Consequently, the connected civil miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS-II)

// True Copy //

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Sub Assistant Registrar(CS)

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Note: *In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.*

To

1.The Commissioner of Income Tax,
(Appeals-19, Chennai)
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3.Assistant Commissioner of Income Tax,
Central Circle - 1, Madurai - 1.

+5 CC to M/s.S.RAMESH, Advocate (SR-13192[F] dated 23/07/2020)

W.A.(MD)No.481 of 2020
and
C.M.P.(MD)No.3455 of 2020
22.07.2020

AL(CO)
TR(31.07.2020) 4P 9C