IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.06.2021

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THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

W.P.No.3523 of 2018

and W.M.P.Nos.4302 & 4303 of 2018

and W.M.P.No.1457 of 2021

R.Savithri Naidu ..Petitioner

Vs.

Income Tax Officer,
Non Corporate Ward 15(4),
Aayakar Bhawan, Wanapathy Building,
Room No.207, 2nd Floor, No.121, N.H. Road,
Chennai 600 034. ..Respondent

Prayer : Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, calling for the records of the impugned order dated 29.12.2017 passed by the respondent against the petitioner for Assessment Year 2015-16 bearing PAN NO.ANTPS3318P and quash the same.

For Petitioner : Mr.Nithyaesh Natraj

For Respondent : Mr.A.P.Srinivas
(Senior Standing Counsel for IT)

ORDER

The original assessment order passed by the respondent in proceeding dated 29.12.2017 is under challenge in the present Writ Petition.

2.The assessment order was passed for the Assessment Year 2015-16. Admittedly, the order of original assessment is an appealable order, under the provisions of the Income Tax Act, 1961 (hereinafter referred to as 'the Act'). When a question is raised regarding this, the learned counsel for the petitioner made a submission that the other connected Writ Petitions filed by the sons of the writ petitioner herein in

W.P.Nos.558, 563 and 566 of 2020 are pending before this Court. In those Writ Petitions, the sons of the writ petitioner has raised certain grounds regarding computation of capitals. Therefore, the Writ Petitions are to be tagged together for the purpose of common hearing.

3.The learned Senior Standing Counsel appearing on behalf of the respondent objected the said contentions by stating that those Writ Petitions filed by the sons of the writ petitioner are absolutely unconnected and not relatable to the original assessment order passed by the competent authority in the impugned proceeding dated 29.12.2017, in the present Writ Petition. The orders challenged in those Writ Petitions filed by the sons of the writ petitioner are search assessment orders passed under Section 153C of the Act. Further, several other issues are also raised in those Writ Petitions in view of the search assessment made in the premises of the sons of the petitioner herein. The learned Senior Standing Counsel reiterated by stating that the grounds raised by the petitioner are dealt with by the original Assessing Officer in the impugned order and findings are also given. Thus, the petitioner has to prefer an appeal, if he is aggrieved from and out of the original assessment order.

4.This Court is of the considered opinion that perusal of the order impugned, same was issued under Section 143(3) of the Act with reference to the Assessment Year 2015-16. Admittedly, the order impugned is the original assessment order. Regarding the ground raised, computation of capital gains, the respondent dealt with the merits with reference to the taxes and made a finding, more specifically, in Paragraph Nos.6, 6.1 and 7 of the assessment order. If at all the petitioner is aggrieved from and out of the finding, it is left open to him to prefer an appeal, as contemplated under the statute.

5.Exhausting the appellate remedy contemplated under the Act is the rule. Dispensing with the appellate remedy is an exception. Only in the event of an imminency, threat or urgency or damages, which cannot be compensated, the High Court may entertain a Writ Petition by dispensing with the appellate remedy. In all other circumstances, exhausting the appellate remedy is of paramount importance for exercise of power of judicial review under Article 226 of the Constitution of India.

6.The appellate authorities are the final fact finding authorities. The High Court cannot conduct a roving enquiry with reference to the disputed facts, accounting details with reference to the documents and evidences. Such an exercise is to be done by the original authority and omissions or commissions or otherwise are to be looked into and considered by the appellate authorities. Certain factual omissions and commissions, if at all traced out in the original order, the said grounds may be raised by the respective parties for rectification or redressal of grievances. Thus, the litigant also need not be deprived of the right of appeal for the purpose of redressing the grievances. Thus, the finding of the appellate authority is of greater assistance for the High Court for effective adjudication of a Writ Petition by exercising the power of judicial review and for providing complete justice to the parties.

7.The power of judicial review of the High Court under Article 226 of the Constitution of India is to scrutinize the processes, through which a decision is taken by the competent authority by following the procedures as contemplated, but not the decision itself. Therefore, the routine entertainment of a Writ Petition, by dispensing with appellate remedy, is not preferable and such an exercise would cause injury to the institutional hierarchy and the importance attached to such appellate institutions. The appellate institutions provided under the statute, at no circumstances, be undermined by the higher Courts. The appellate forums are the final fact finding authorities and more so, possessing expertise in a particular field. Thus, the finding of such appellate forums would be a valuable assistance for the purpose of exercise of judicial review by the High Court, under Article 226 of the Constitution of India.

8.The point of delay may be an acceptable ground for the purpose of entertaining a Writ Petition. The practise of filing the Writ Petition without exhausting the statutory remedies are in ascending mode and such Writ Petitions are filed with a view to avoid pre-deposits to be made in statutory appeals and on the ground that the appellate remedies are time consuming.

9.In view of the fact that the order under challenge in the present Writ Petition is the original assessment order passed under Section 143(3) of the Act, the petitioner is at liberty to prefer an appeal before the appellate authority, namely the Commissioner of Income Tax (Appeals), within a period of three weeks from the date of receipt of a copy of this order. If any such appeal is received by the appellate authority, the same shall be entertained by condoning the delay, if any, and to be disposed of on merits and in accordance with law and by affording opportunity to the parties concerned, as expeditiously as possible.

10.With these directions, the Writ Petition stands disposed of. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CS-VII)

//True Copy//

Sub Assistant Registrar

gsa

To

The Income Tax Officer,
Non Corporate Ward 15(4),
Aayakar Bhawan, Wanapathy Building,
Room No.207, 2nd Floor, No.121, N.H. Road,
Chennai 600 034.

+1cc to Mr.A.P.Srinivas, Advocate, S.R.No.29100

W.P.No.3523 of 2018

CP(CO)
SB(26/07/2021)