IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.06.2021

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THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

W.P.Nos.8761 & 10211 of 2015
and
M.P.Nos.1 & 1 of 2015

M/s.Star Aviation Pvt. Ltd.,
Rep. By its Director, Sri T.V.Dorairaj,
Son of Sri Vijayaraghavan,
No.90, II Floor,
Dr.Radhakrishnan Salai,
Mylapore,
Chennai 600 004. ..Petitioner in both W.P.s

Vs.

The Deputy Commissioner of Income-Tax
Company Circle – VI (4),
Room No.705, 7th Floor, Vanaparthy Block,
121, M.G. Road,
Nungambakkam,
Chennai 600 034. ..Respondent in both W.Ps.

Prayer in W.P.No.8761/2015 : Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, calling for the records in No.Misc/Co. Cir VI (4)/ 2014-15 dated 31.10.2014 relating to Assessment Year 2009-10 on the file of the respondent and quash the same.

Prayer in W.P.No.10211/2015 : Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, calling for the records in PAN AAJCS6206J dated 25.03.2015 relating to Assessment Year 2009-10 on the file of the respondent and quash the same.

(In both W.Ps.)
For Petitioner : Mr.M.P.Senthil Kumar

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

COMMON ORDER

The order dated 31.10.2014 in reply to the objection for reopening of the Assessment under Section 147 of the Income Tax

Act, 1961, (hereinafter referred to as 'the Act') is under challenge in the present Writ Petition.

2. The petitioner is a Company registered under the Companies Act, 1956 on 25.10.2015, at Chennai. It commenced its operations in the field of Aviation. Based on the returns submitted by the petitioner, an assessment order was passed by the competent authority on 22.12.2011 under Section 143 (3) of the Act. However, within a period of four weeks, the proceedings for reopening of assessment order was initiated under Section 147 of the Income Tax Act. Notice under Section 148 of the Act was issued on 25.03.2014 and the petitioner filed his reply on 22.04.2014. The reasons for reopening of assessment was furnished in proceedings dated 07.05.2014 and the objections were submitted by the petitioner on 06.06.2014 and the objections were disposed of by the authority competent on 31.10.2014 with reference to the assessment year 2009-10. The said proceedings dated 31.10.2014 is under challenge in W.P.No.8761 of 2015. A conditional interim order was granted by this Court stating that the stay holds good in the event of not passing the assessment order by competent authority. However, it is brought to the notice of this Court that the assessment order was passed by the competent authority and therefore, the writ petitioner was constrained to file another writ petition in W.P.No.10211 of 2015 challenging the assessment order passed by the Assistant Commissioner of Income Tax (OSD) in proceedings dated 25.03.2015.

3. The learned counsel for the petitioner strenuously contended that though an assessment order was passed, the grounds raised in the first Writ Petition filed in W.P.No.8761 of 2015 holds good and the grounds raised is the basis for the case of the petitioner. The said grounds are to be considered even with reference to the assessment order passed subsequently during the pendency of the first Writ Petition. In other words, it is contended that the very initiation of reopening the proceedings under Section 147, issuance of notice under Section 148 and the reasons furnished are untenable and therefore, the assessment order is liable to be quashed.

4. The learned counsel for the petitioner solicited the attention of this Court with reference to the reasons furnished by the respondent for reopening of assessment and the sustainability of the reasons with reference to the reply given by the petitioner. This Court is of the considered opinion that the mixed question of fact and law is to be decided with reference to the original documents and evidences by the appellate authority in the present case, as statutory appeal is contemplated under the provisions of the Income Tax Act.

5. Preferring an appeal is the rule. Entertaining a Writ Petition before exhausting the appellate remedy is an exception. Undoubtedly, writ proceedings may be entertained before exhausting the appellate remedy. However, it is to be ensured that there is an imminent threat or gross injustice warranting urgent relief to be granted. Mere violation of principles of natural justice is insufficient to entertain a writ proceedings under Article 226 of the Constitution of India, as every Writ Petition is filed based on one or the other ground stating that the principles of natural justice is violated or statutory requirements are not complied with or there is an illegality or otherwise. Thus, dispensing with an appellate remedy is to be granted cautiously in view of the fact that the very purpose and object of legislation providing an appellate remedy cannot be diluted nor the benefit be denied to the aggrieved person to exhaust the same. The statutory appellate authorities are the final fact finding authorities. Thus, the finding to be made by such appellate authorities with reference to the documents and evidences are of paramount importance for the purpose of exercise of judicial review by the High Court under Article 226 of the Constitution of India.

6. 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. The High Court cannot conduct a rowing enquiry with reference to the facts and circumstances based on the documents and evidences. Based on the mere affidavits filed by the litigants, the disputed facts cannot be concluded. Thus, the importance of fact finding by the appellate forums is of more value for the purpose of providing complete justice to the parties approaching the Court of law.

7.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.

8. The 2nd Writ Petition is filed challenging the original assessment order. Thus, the petitioner is at liberty to prefer an appeal contemplated under the statute for redressal of his grievances by following the procedures. The petitioner is at liberty to prefer such an appeal within a period of four weeks from the date of receipt of a copy of this order. The appellate authority in the event of receiving any appeal from the petitioner, shall entertain the same, condone the delay if any, and adjudicate the appeal on merits, in accordance with law and by affording opportunity to the parties concerned as expeditiously as possible.

9. With these directions, both the Writ Petitions stand disposed of. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

Gsa

To

The Deputy Commissioner of Income-Tax
Company Circle – VI (4),
Room No.705, 7th Floor, Vanaparthy Block,
121, M.G. Road, Nungambakkam,
Chennai 600 034.

Copy To

The Section Officer,
E.R. Section, High Court,
Madras.
(To Return the Original impugned orders)

+2cc to Mr.N.Muthukumar, Advocate, S.R.No. 28287, 28286
+1cc to Mr.A.P.Sriniva, Advocate, S.R.No. 28227

W.P.Nos.8761 & 10211 of 2015

GPL(CO)
GN(19/07/2021)