In the High Court of Judicature at Madras

Dated : 06.9.2021

Coram

The Honourable Mr.Justice T.S.SIVAGNANAM
and
The Honourable Mr.Justice SATHI KUMAR SUKUMARA KURUP

Writ Appeal No.2201 of 2021 & CMP.No.13930 of 2021

M/s.Rakindo Kovai Township
Private Ltd., rep.by its Chief
Executive Officer Mr.Karthik S

(cause title accepted vide order of court
date 23.7.2021 in CMP.No.10881 of
2021 by MDJ & RHJ) ...Appellant

Vs

1.The Assistant Commissioner of
Income Tax, Company Circle V(2),
121, Nungambakkam High Road,
Chennai-34.

2.The Assistant Commissioner of
Income Tax, Company Circle-V(3),
121, Nungambakkam High Road,
Chennai-34.

3.The Deputy Commissioner of
Income Tax, Company Circle V(3),
121, Nungambakkam High Road,
Chennai-34. ...Respondents

APPEAL under Clause 15 of the Letters Patent against the order dated 15.6.2021 made in W.P.No.1104 of 2011.

Prayer in WP.1104/2011: Writ petition filed under Article 226 of the Constitution of India, Praying for the issue of writs of certiorari, to call for the records in the proceedings Nos.AADCR8015N & AADCR5365H dated 30.12.2010 relating to the Asssessment year 2008-2009 on the file of the 1st respondent and quash the same.

For Appellant : Mr.G.Baskar

For Respondents : Mr.S.Prabhu Mukunth Arunkumar, JSC

Judgment was delivered by T.S.SIVAGNANAM,J

We have heard Mr.G.Baskar, learned counsel appearing for the appellant and Mr.S.Prabhu Mukunth Arunkumar, learned Junior Standing Counsel accepting notice for the respondents.

2. This appeal by the appellant – assessee is directed against the order dated 15.6.2021 passed in W.P.No.1104 of 2011, which was disposed of along with W.P.No.1103 of 2011.

3. The appellant filed the said writ petitions challenging the assessment order dated 30.12.2010 for the year 2007-08.

4. It is relevant to state that the order passed in W.P.No.1103 of 2011 has been affirmed by this Court in W.A.No.1791 of 2021 by judgment dated 23.8.2021 rendered by us.

5. The challenge to the order of assessment was primarily on the ground of violation of the principles of natural justice, as the assessee did not have adequate opportunity to explain to the Assessing Officer voluminous documents, which were presented by the assessee at the time of assessment.

6. The assessee would state that initially, the assessment was dealt with by a different officer and subsequently, the file got transferred to the officer, who passed the assessment order dated 30.12.2010 and the said officer rushed through the entire matter and without affording opportunity to the assessee, the assessment has been completed.

7. The respondents filed a counter stating that not only notice was issued by the earlier officer, even after the file was transferred to the new officer, he also issued a notice under Section 143(2) of the Income Tax Act, 1961, the authorized representative appeared on various dates and he affixed his signatures in the assessment file on 27.12.2010, which would go to show that the assessee was given adequate opportunity.

8. The learned Single Judge disposed of both the said writ

petitions on the ground of availability of an alternate remedy.

9. After elaborately hearing the learned counsel for the parties and carefully perusing the order impugned before us, we entirely agree with the view taken by the learned Single Judge.

10. Admittedly, the Income Tax Act is a Code by itself and it provides for hierarchy of remedies. The contention both before the learned Single Judge as well as before us is that the assessee did not have adequate opportunity to explain the voluminous documents. On the other hand, the Assessing Officer would submit that adequate opportunity was granted and the assessee represented by their authorized representative was heard.

11. In any event, whether appreciation of the documents was done or not and whether there was sufficient opportunity granted to the assessee or not are all issues, which can be canvassed before the First Appellate Authority and we find that there is no valid reason for the assessee to bypass a statutory appeal remedy. Therefore, we are not inclined to interfere with the impugned order before us.

12. Accordingly, the above writ appeal is dismissed. The liberty granted to the assessee by the learned Single Judge in paragraph 24 of the order impugned is sustained. The order of assessment is dated 30.12.2010 and W.P.No.1104 of 2011 was filed on 18.1.2011. Hence, the period from 18.1.2011 till the date of receipt a certified copy of this judgment shall be excluded while computing limitation. The appellant is granted two weeks' time from the date of receipt of a certified copy of this judgment to file an appeal before the First Appellate Authority and if the same is filed, the appeal shall be taken on file by the First Appellate Authority without rejecting the same on the ground of limitation. Till then, the respondents shall not initiate any coercive action against the appellant. No costs. Consequently, the connected CMP is also dismissed.

Sd/-
Assistant Registrar(CS-IV)

//True Copy//

Sub Assistant Registrar

RS

To

1.The Assistant Commissioner of Income Tax, Company Circle V(2),
121, Nungambakkam High Road, Chennai-34.

2.The Assistant Commissioner of Income Tax, Company Circle-V(3),
121, Nungambakkam High Road, Chennai-34.

3.The Deputy Commissioner of Income Tax, Company Circle V(3),
121, Nungambakkam High Road, Chennai-34.

+1cc to M/s.Hema Krishnan, Advocate, S.R.No.44813

WA.No.2201 of 2021 &
CMP.No.13930 of 2021

LN(CO)
SB(27/09/2021)