IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.08.2021

CORAM :

THE HON'BLE MR.JUSTICE T.S.SIVAGNANAM
AND
THE HON'BLE MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

W.A.NO.1884 OF 2021
AND
C.M.P.NOS.12018 & 12019 OF 2021

Kovalam Santhana Krishnan Mohan ... Appellant

Vs.

Income Tax Officer,
Ward-I,
Income Tax Office,
Ootacamund. ... Respondent

Prayer : Writ Appeal filed under Clause 15 of the Letters Patent to set aside the judgment dated 26.04.2021 made in W.P.No.32371 of 2017 and consequently quash and set aside notice dated 30.03.2017 issued by the Respondent under Section 148 of the Income Tax Act 1961 reopening assessment for PAN AMNPM3778N for the assessment year 2010-11 and all proceedings in furtherance thereof including but not limited to order dated 04.12.2017 disposing of the appellant's objections to the reopening of assessment for AY 2010-11, and to quash the same as arbitrary, unjust and illegal, and to consequently forbear the Respondent from in any manner reassessing the appellant's income u/s 147 for AY 2010-11.

Prayer in WP.No.32371 of 2017:

Writ Petition filed under Article 226 of the Constitution of India praying to issue a writ of Certiorarified Mandamus Calling for the records of the respondent comprised in its notice issued under Section 148 of the Income Tax Act 1961 for PAN: AMNPM3778N dated 30.03.2017 and all proceedings in furtherance thereof including but not limited to the order dated 04.12.2017 disposing of the petitioners objections to the reopening of the income tax assessment for the assessment year 2010-11 passed by the respondent and to quash the same as arbitrary unjust and illegal and to consequently forbear the respondent from in any manner reassessing the petitioners income under section 147 of the Income Tax Act 1961 for the Assessment year 2010-11

For Appellant : Mr.Suhrith Parthasarathy

For Respondent : Mr.A.P.Srinivas
Senior Standing Counsel

J U D G M E N T
(Judgment was delivered by T.S. SIVAGNANAM, J.)

This Writ Appeal is directed against the order, dated 26.04.2021, in W.P.No.32371 of 2017, by which, the writ petition filed by the appellant challenging the order passed by the Assessing Officer, dated 04.12.2017, was dismissed.

2.It is admitted fact that the assessee/appellant did not file his return of income for the Assessment Year under consideration. Notice was issued and the matter proceeded and there was an earlier round of litigation where the appellant came before this Court stating that the principles of natural justice have been violated and well before a date was fixed for the appellant to produce the documents, the Assessing Officer passed an order on 25.09.2017. The writ petition was allowed by order dated 20.11.2017, remanding the matter back to the Assessing Officer. During the pendency of the said writ petition, the appellant/assessee had submitted details of all the transactions done by them vide letter dated 27.09.2017. This was also accompanied by the financial details of the appellant for the Assessment Year 2009-10. On remand, the Assessing Officer passed the order dated 04.12.2017, which was also one of the orders impugned in the writ petition.

3.The question that is to be established by the appellant/assessee is that, in respect of the two documents where immovable property was sold by the appellant and consideration was received, the appellant had to prove that such transaction took place in the financial year relevant to the Assessment Year 2009-10. The Assessing Officer has gone by the date of registration of the sale deed by obtaining certain information from the office of the Sub-Registrar, Thirupundi.

4.In our considered view, this being the factual issue, it would be better for the appellant to agitate the matter as and when the assessment is finalized, because it is the Assessing Authority under the Act, who would be in a better position to appreciate the factual position. The appellant's definite case is that, possession was handed over in February, 2009 and the transaction stood concluded in the Assessment Year 2009-10. Much reliance has been placed on the profit and loss account for the said year, wherein, the total credit has been mentioned as Rs.6,51,94,775/- and it is sought to be demonstrated before us that it is the same figure which the appellant had submitted before the Assessing Officer at the very first instance. In our considered view, the right course to be adopted by the appellant is to await the order of assessment and then agitate his contentions. Thus, we concur with the ultimate conclusion arrived at by the learned Single Bench. We are of the view that the appellant should avail the alternate remedy under the Act after the assessment is concluded.

5.We are conscious of the fact that the learned Single Bench has made certain observations on the merits of the case and certain other observations in Para Nos.15 to 17. Since we are of the view that the appellant should agitate all the contentions after the assessment is completed, we vacate all those findings in the impugned order and dispose of this Writ Appeal with an observation that the appellant will be free to agitate all his contentions on facts as well as law before the appropriate forum, as and when the assessment is completed. No costs. Consequently, connected miscellaneous petitions are closed.

s/d-
Assistant Registrar(CS VI)

True Copy

Sub-Assistant Registrar

mkn

To

The Income Tax Officer,
Ward-I,
Income Tax Office,
Ootacamund.

+1cc to M/S Arun Karthik Mohan, Advocate, SR.No.38405
+1cc to M/S A.P.Srinivas, Advocate, SR.No.38531

W.A.No.1884 of 2021

PM(CO)
PM(03/09/2021)