IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26-07-2021

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THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

WP No.15255 of 2021
And
WMP Nos.16147 and 16148 of 2021

V.Thillainatesan ..Petitioner

vs.

The Additional Commissioner of Income Tax,
Income Tax Department,
National E-Assessment Center,
Delhi. ..Respondent

Writ Petition is filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorarified Mandamus, calling for the records on the file of the respondent vide Pan No.AGPPT8271K-ITBA/AST/S/143(3)/2021-22/1032530155(1) dated 19.04.2021 and quash the same as illegal as devoid of merits and direct the respondent to re-do the assessment for the year 2018-2019 after providing reasonable opportunities to the petitioner, by following the due process of law.

For Petitioner : Mr.Raja.Karthikeyan

For Respondent : Ms.Hema Muralikrishnan,

Senior Standing Counsel
for Income Tax.

O R D E R

The writ on hand is instituted questioning the validity of the final assessment order passed by the respondent under Section 143(3) read with Section 144-B of the Income Tax Act, 1961 [hereinafter referred to as the 'Act 1961', in short].

2. Admittedly, the order impugned is an appelable order under the Income Tax Act. Instead of preferring an appeal, the

petitioner has chosen to file the present writ petition mainly on the ground that the order impugned was passed in violation of the principles of natural justice and without application of mind as well as not considering the statutory provisions.

3. Perusal of the grounds raised in order to assail the final order of assessment, this Court is of the considered opinion that the Appellate Authority, being a Quasi Judicial Authority, is empowered to adjudicate the mixed question of facts and law in an effective manner with reference to the original documents and the evidences made available.

4. Exhausting the appellate remedy under the Statute is of paramount importance. Court, at no circumstances, shall entertain a writ petition before exhausting the statutory appeal remedy, as the Appellate Authority is a final fact finding authority with reference to the disputed facts.

5. The High Court cannot adjudicate the disputed facts elaborately in writ proceedings. Thus, the findings of an Appellate Authority regarding facts would be of greater assistance to the High Court for the purpose of exercise of judicial review by the High Court under Article 226 of the Constitution of India. Therefore, the importance of appellate remedy, at no circumstances, be undermined and the aggrieved person need not be unnecessarily deprived of a valuable opportunity of appellate remedy provided under the Act.

6. The object as well as the legislative intention are to ensure that the facts are adjudicated without any ambiguity. Thus, any order in original is to be tested before the Appellate Authority for the purpose of conclusion of the disputed facts and without exhausting the appellate remedy to the writ remedy is not preferable and the High Court must be cautious and slow in entertaining the writ petition in such circumstances.

7. Undoubtedly, in extraordinary cases and on exceptional circumstances, if any order is passed by an authority incompetent having no jurisdiction or an allegation of mala fides are raised and substantiated, writ proceedings may be entertained. Even in such circumstances, the authority against whom such allegation of mala fides are raised must be impleaded as a party respondent in his personal capacity in the writ proceedings. In all other circumstances, the parties aggrieved are expected to exhaust the appellate remedy, which is of valuable and would be of assistance for the High Court in providing complete justice to the parties to the lis.

8. 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.

9. 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 roving 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.

10. 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.

11. In view of the facts and circumstances, the petitioner is at liberty to approach the jurisdictional Appellate Authority as contemplated under the Act for the purpose of redressal of his grievances.

12. With the above liberty, the writ petition stands disposed of. However, there shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS-VI)

// True Copy//

Sub Assistant Registrar

Svn

To:

The Additional Commissioner of Income Tax,
Income Tax Department,
National E-Assessment Center,
Delhi.

+1cc to M/S.Hema Muralikrishnan, Advocate, S.R.No.35758

WP No.15255 of 2021

AK(CO)
SU(12/08/2021)