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IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATE: 26.08.2021

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THE HONOURABLE MR.JUSTICE M.SUNDAR

W.P.No.17819 of 2021
&
W.M.P.Nos.19022 and 19023 of 2021

K 2004 Veerapandi Cooperative House
Building Society Limited
Rep. By its Secretary
A.Nagaraj M41
S/o.Arumugam
No.B11-14, K.M. Towers
Kangayam Cross Road
Tiruppur – 641 604 ... Petitioner

Vs.

The Additional /Joint / Deputy/
Assistant Commissioner of Income Tax/
Income Tax Officer, National e-Assessment Centre
Delhi ... Respondent

Writ petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari calling for the entire records relating to the impugned order passed by the respondent in ITBA/AST/S/143(3)/2020-21/1031436742(1) dated 12.03.2021 and quash the same.

For Petitioner : Mr.C.Prakasam

For Respondent : Mr.A.N.R.Jayapratap
Junior Standing Counsel

ORDER

Captioned writ petition and 'Writ Miscellaneous Petitions' (hereinafter 'WMPs' in plural and 'WMP' in singular for the sake of brevity) are listed in the Admission Board.

2. Mr.C.Prakasam, learned counsel for writ petitioner is before this Virtual Court. Mr.A.N.R.Jayapratap, learned junior Standing Counsel for Income Tax accepts notice on behalf of lone respondent, with the consent of learned counsel on both sides, main writ petition is taken up as the matter turns on a very short point.

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3. In the captioned main writ petition, an Assessment Order being 'order dated 12.03.2021 bearing reference ITBA/AST/S/143(3)/2020-21/1031436742(1)' (hereinafter 'impugned order' for the sake of convenience and clarity) has been called in question. Learned counsel for writ petitioner points out that the impugned order pertains to the assessment year 2018-19. Learned counsel submits that the writ petitioner is entitled to get deduction under Section 80B of 'The Income-tax Act, 1961 (43 of 1961)' [hereinafter 'IT Act' for the sake of brevity], as according to him, the income collected by way of interest from borrowers / members of the Society (writ petitioner) have to be disbursed to its depositors.

4. This Court deems it appropriate to not to dilate any further on factual aspects as a statutory appeal is available against the impugned order. There is no pre-deposit condition and the statutory appeal is under Section 246A of IT Act. This Court is informed that Appellate Authority is Commissioner of Income Tax (Appeals), Coimbatore. This Court is also informed that there is no cap qua 'Condonation of Delay' ('COD' for the sake of brevity) with regard to filing of the appeal and it is at the discretion of the Appellate Authority. The most important and significant aspect of the matter even according to the impugned order is, a show-cause notice dated 04.03.2021 has been sent to the writ petitioner / assessee and writ petitioner has not sent any reply or explanation. Owing to this, the respondent has concluded that the Assessee has no objection qua addition/disallowance made in the draft Assessment Order. In other words, that point that is being canvassed turns on Section 80B of IT Act was not raised before the Assessing Officer though an opportunity was given to the writ petitioner and writ petitioner did not avail the same. In this view of the matter, nothing prevents the writ petitioner from raising this very point in an appeal. The right of the writ petitioner to raise this point before the Appellate Authority is preserved. This Court has repeatedly held that alternate remedy, though not a absolute rule i.e., a rule of discretion and self imposed restraint qua writ court has to be applied strictly when it comes to fiscal statutes as long as exceptions such as NJP violation are not attracted. This view of this court has been taken by respectfully following the ratio laid down by Hon'ble Supreme Court in a long line of case laws including Dunlop India, Satyawati Tondon and K.C.Mathew case laws being Assistant Collector of Central Excise, Chandan Nagar, West Bengal Vs Dunlop India Ltd. reported in (1985) 1 SCC 260, United Bank of India Vs. Satyawati Tondon reported in (2010) 8 SCC 110 and Authorized Officer, State Bank of Travancore Vs Mathew K.C. reported in (2018) 3 SCC 85. Relevant paragraphs in Dunlop India and K.C.Mathew are paragraph Nos.3 and 10 respectively and the same read as follows:

Paragraph No.3 in Dunlop India case:

'3. ..... Article 226 is not meant to short-circuit or circumvent statutory procedures. It is only

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where statutory remedies are entirely ill-suited to meet the demands of extraordinary situations, as for instance where the very vires of the statute is in question or where private or public wrongs are so inextricably mixed up and the prevention of public injury and the vindication of public justice require it that recourse may be had to Article 226 of the Constitution. But then the Court must have good and sufficient reason to bypass the alternative remedy provided by statute. Surely matters involving the revenue where statutory remedies are available are not such matters. We can also take judicial notice of the fact that the vast majority of the petitions under Article 226 of the Constitution are filed solely for the purpose of obtaining interim orders and thereafter prolong the proceedings by one device or the other. The practice certainly needs to be strongly discouraged.'

(Underlining made by this Court to supply emphasis and highlight)

Paragraph No.10 in K.C.Mathew case :

'10. In Satyawati Tondon the High Court had restrained further proceedings under Section 13(4) of the Act. Upon a detailed consideration of the statutory scheme under the SARFAESI Act, the availability of remedy to the aggrieved under Section 17 before the Tribunal and the appellate remedy under Section 18 before the Appellate Tribunal, the object and purpose of the legislation, it was observed that a writ petition ought not to be entertained in view of the alternate statutory remedy available holding: (SCC pp.123 & 128, Paras 43 & 55)

"43. Unfortunately, the High Court overlooked the settled law that the High Court will ordinarily not entertain a petition under Article 226 of the Constitution if an effective remedy is available to the aggrieved person and that this Rule applies with greater rigour in matters involving recovery of taxes, cess, fees, other types of public money and the dues of banks and other financial institutions. In our view, while dealing with the petitions involving challenge to the action taken for recovery of the public dues, etc., the High Court must keep in mind that the legislations enacted by Parliament and State Legislatures for recovery of such dues are a code unto themselves inasmuch as they not only contain comprehensive procedure for recovery of the dues but also envisage constitution of quasi-judicial bodies for redressal of the grievance of any aggrieved person. Therefore, in all such cases, the High Court must insist that before availing remedy under Article 226 of the Constitution,

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a person must exhaust the remedies available under the relevant statute.

55.It is a matter of serious concern that despite repeated pronouncement of this Court, the High Courts continue to ignore the availability of statutory remedies under the DRT Act and the SARFAESI Act and exercise jurisdiction under Article 226 for passing orders which have serious adverse impact on the right of banks and other financial institutions to recover their dues. We hope and trust that in future the High Courts will exercise their discretion in such matters with greater caution, care and circumspection.'

(underlining made by this Court to supply emphasis and highlight)

5. To be noted, in K.C. Mathew's case the paragraph extracted and reproduced supra, Satyawati Tondon principle has been reiterated.

6. One of the orders in which this court has taken aforementioned view has been affirmed by a Hon'ble Division Bench of this Court. The writ petition order is dated 28.06.2019 (in W.P.No.17804 of 2019) and the order of Hon'ble Division Bench confirming the same is order dated 10.02.2020 in W.A.No.196 of 2020. Therefore, the aforementioned alternate remedy rule qua fiscal statute is the view of a Hon'ble Division Bench of this Court and this Court respectfully follows the same.

7. Captioned writ petition is, therefore, disposed of holding that the rights of the writ petitioner to prefer an appeal against the impugned Assessment Order i.e., appeal under Section 246A of IT Act to Commissioner of Income Tax (Appeals), Coimbatore, Appellate Authority raising all points available to the writ petitioner including the points raised in the instant writ petition are preserved. If there is any delay in preferring the appeal, it is open to the writ petitioner to seek COD and if such an COD prayer is made, Appellate Authority shall decide the same on its own merits and in accordance with law.

Captioned writ petition is disposed of in the aforesaid manner. There shall be no order as to costs. Consequently, connected WMPs are closed.

Sd/-
Assistant Registrar(CS VI)

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Sub Assistant Registrar

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The Additional /Joint / Deputy/
Assistant Commissioner of Income Tax/
Income Tax Officer, National e-Assessment Centre
Delhi

Copy to :
The Commissioner of Income Tax(Appeals),
Coimbatore.

+1cc to Mr.A.P.Srinivas, Advocate SR.No. 43184

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W.M.P.Nos.19022 and 19023 of 2021

GPL(CO)
A.SK(20.09.2021)

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