



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.07.2021

CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

W.P.No.30980 of 2014
& M.P.No.1 of 2014

M/s.Saravana Stocks Investments Pvt. Ltd.,
New No.6, Old No.29, Second Main Road,
CIT Nagar, Mylapore,
Chennai 600 004.
Rep. By its Director,
Mr.D.Sathyamoorthi,
Son or Mr.Devarajulu

..Petitioner

Vs.

Assistant Commissioner of Income Tax
Company Circle - VI (1),
121, Nungambakkam High Road,
Chennai 600 034.

..Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, calling for the records in P.A.No.AAAICS7328C dated 13.11.2014, relating to the Assessment Year 2006-07, on the file of the respondent, quash the same.

For Petitioner : Mr.M.P.Senthilkumar

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

O R D E R

The order of assessment dated 13.11.2014, passed under Section 143 (3) read with Section 147 of the Income Tax Act, 1961 (hereinafter referred to as, 'the Act'), is under challenge in this Writ Petition. The assessment order was passed with reference to the Assessment Year 2006-07. The petitioner is a regular assessee and filed Return of Income. The learned counsel for the petitioner made a submission that the regular assessment was made based on the materials, books of accounts and informations provided by the assessee and was concluded. However, the reopening of assessment proceedings were initiated on change of opinion and therefore, the petitioner has chosen to approach this Court. The learned counsel for the petitioner

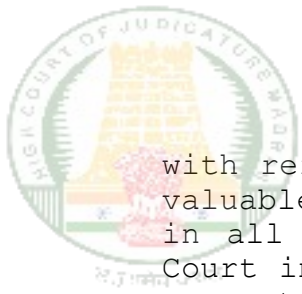


reiterated that the Hon'ble Supreme Court of India granted stay on 14.11.2014, stating that stay will be in force if the assessment orders are not passed. However, the assessment order was passed on 13.11.2014 and the learned counsel for the petitioner states that it was antedated, in view of the fact that the assessment order was despatched on 15.11.2014. However, this Court cannot go into those facts with reference to the interim order passed by the Hon'ble Supreme Court of India.

2.The fact remains that the assessment order is under challenge in the present Writ Petition. Admittedly, it is an appealable order. The learned counsel for the petitioner made a submission that reopening of assessment is made based on change of opinion and not on any tangible materials. Thus, the assessment order itself is perverse and not in consonance with the conditions stipulated under Sections 147 and 148 of the Act.

3.This Court is of the considered opinion that the merits part of the assessment order need not be gone into by the High Court at this point of time, as the appeal remedy provided under the Act is efficacious. The appellate authority is the final fact finding authority. The High Court cannot adjudicate disputed facts with reference to certain transactions. If at all the initiation of 147 proceedings are initiated on change of opinion and an assessment order is passed, then also, the assessee is at liberty to raise all such grounds, including the ground of change of opinion and not based on reason to believe.

4.The order of assessment would reveal that certain materials, informations, based on the reopening of assessment was considered and order was passed. Thus, finding in the assessment order impugned require an adjudication with reference to the original records available. Such an adjudication cannot be done by the High Court in a writ proceedings under Article 226 of the Constitution of India. Certain intricacies and expertise in the matter of accountancy are to be considered by the appellate authorities and it may not be appropriate on the part of the High Court at this juncture to venture into the disputed transactions as well as the other materials available on record. Thus, the final fact finding by the appellate authority would be of assistance for the purpose of exercise of the power of judicial review by the High Court under Article 226 of the Constitution of India. Thus, exhausting the appellate remedy is of paramount importance and at no circumstances, be undermined. In the event of adjudication of the facts and circumstances, which all are disputed in a writ proceedings, the aggrieved persons are deprived of an opportunity of getting redressal through the appeals which is contemplated under the statute. The appeals are provided with a legislative intention to provide an effective adjudication by the higher authority



with reference to the documents and evidences. Therefore, such a valuable opportunity is to be provided to an aggrieved assessee in all circumstances. In the event of any finding by the High Court in a writ proceedings based on the affidavits filed by the respective parties, there is a possibility of error or commission or omission. Such error or commission would lead to miscarriage of justice on some occasions. Thus, these aspects are to be considered by the High Court, while dispensing with the appellate remedy provided under the statute, which all are valuable and has got a specific meaning and intention.

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 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.

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.This being the factum established, the petitioner is at liberty to prefer an appeal before the appellate authority having jurisdiction within a period of four weeks from the date of receipt of a copy of this order. In the event of filing any such appeal, the appellate authority is bound to adjudicate the same on merits and in accordance with law and by affording opportunity to the writ petitioner and dispose of the appeal as expeditiously as possible.

With this direction, the Writ Petition stands disposed of. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

gsa

To

1. The Assistant Commissioner of Income Tax
Company Circle - VI (1),
121, Nungambakkam High Road,
Chennai 600 034.

2.The Section officer,
English Record section,
High court, Madras.

+1cc to M/s.A.P.Srinivas,Advocate, SR No.32556

+1cc to M/s.G.Baskar,Advocate, SR No.32723

W.P.No.30980 of 2014

GMI (CO)

B.VC (04/08/2021)