IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.08.2021
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THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.12283 of 2013

Santhosh Kumar Kanodia ...Petitioner

Vs

1. The Union of India,
   Rep.by the Secretary to Government,
   Ministry of Finance,
   Department of Revenue,
   New Delhi.

2. The Assistant Commissioner of Income Tax,
   Circle-III, Coimbatore – 641 018.

3. The Joint Commissioner of Income Tax,
   Coimbatore – 641 018. ...Respondents

Prayer : Writ Petition filed Under Article 226 of the Constitution of India to issue of Writ of Certiorari, calling for the records of the 2nd respondent comprised in its communication dated 27.03.2012, the consequential communication of reasons dated 11.12.2012 and the consequential assessment order passed by the 3rd respondent on 30.03.2013 and quash the same as being without jurisdiction, arbitrary, illegal and violative of the Constitution of India and the provisions of the Income Tax Act, 1961 and the law declared in this regard by the Hon'ble Supreme Court.

For Petitioner : Mr.Rahul Balaji

For Respondents R1 : No appearance
R2&R3 : Mr.A.P.Srinivas
Senior Standing counsel
[For Income Tax]

ORDER

The relief sought for in this writ petition is to call for the records of the 2nd respondent comprised in its communication dated 27.03.2012, the consequential communication of reasons dated 11.12.2012 and the final assessment order passed by the 3rd respondent on 30.03.2013 and quash the same.

2. The petitioner is a partner of M/s.Sumukha Enterprises, apart from carrying on business of a proprietary concern under the name and syle of M/s.Ekdanta Synthetics. The learned counsel for the petitioner made a submission that the original assessment order was passed by the second respondent on 31.12.2007 based on the return of income filed as well as the Books of Accounts and materials produced by the petitioner/assessee. After completion of the assessment proceedings, the respondents initiated reopening proceedings under Section 147 of the Income Tax Act [hereinafter referred to as the 'Act'] and a notice under Section 148 was issued on 27.03.2012. The reasons stated for reopening of assessment in vide letter dated 11.12.2012 reveals that the "the information obtained from the impounded materials with regard to sales is not tallying with the details disclosed by assessee in the Return of Income for Assessment Year 2005-06. Therefore, the authority has reasons to believe that the petitioner is suppressed the primary facts of sales effected during the relevant period in the ROI and accordingly, the assessment is reopened."

3. The learned counsel for the petitioner made a submission by stating that the reasons stated are based on the materials already submitted before the original assessing authority. The survey report of the Deputy Director Unit was considered by the Assessing authority and thereafter, the final assessment order was passed. Therefore, the very same materials considered for the purpose of passing the original assessment order was taken for the purpose of reopening of assessment. Thus, the very reopening is change of opinion and not based on any tangible materials.

4. The learned Senior Standing counsel raised an objection by stating that all these grounds on merits are to be adjudicated before the competent authority. In the present case, the reassessment order has already been passed in proceedings dated 30.03.2013 and therefore, the petitioner has to prefer an appeal under the provisions of the Act for adjudication of the issues.

5. This Court is of the considered opinion that the reasons furnished for reopening of the assessment in proceedings dated 11.12.2012 would reveal that the Assessing Officer has reason to believe that the information obtained from the impounded materials with regard to sales is not tallying with the details disclosed by assessee in the Return of Income for Assessment Year 2005-06. However, the petitioner / assessee states that the materials are one and the same.

6. This Court cannot conduct a Roving enquiry in respect of such contradictions as well as the grounds raised. The materials considered for reopening of the assessment and non-consideration of certain factual aspects by the original Assessing authority at the time of passing the assessment order are to be adjudicated with reference to the original documents and evidences. Thus, preferring an appeal in this case is imminent for the purpose of redressal of grievances of the assessee. Contrarily, High Court cannot adjudicate the disputed facts in a writ proceedings and merely based on the affidavit filed by the petitioner. It requires an examination in detail. Thus, the petitioner has bound to redress his grievances by preferring an appeal provided under the Statute and by following the procedures contemplated.

7. 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.

8. 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.

9. The point of delay may be an acceptable ground for the purpose of entertaining a Writ Petition. The practice 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.

10. In view of the facts and circumstances, the petitioner is at liberty to prefer an appeal before the jurisdictional Appellate authority within a period of four weeks from the date of receipt of a copy of this order and in the event of preferring any such appeal, the Appellate authority shall condone the delay and adjudicate the issues on merits and in accordance with law and by affording opportunity to all the parties and dispose of the same as expeditiously as possible.

11. With these directions, the writ petition stands disposed of. No costs.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

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To

1. The Secretary to Government,
   Union of India,
   Ministry of Finance,
   Department of Revenue,
   New Delhi.

2. The Assistant Commissioner of Income Tax,
   Circle-III, Coimbatore - 641 018.

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GPL(CO)
LS(25/08/2021)