IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 30.06.2021

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THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

W.P.No.1824 of 2018
and W.M.P.No.2273 of 2018

Praveen Kumar ..Petitioner

Vs.

The Income Tax Officer,
Non-Corporate Ward-12(4),
223, BSNL Towers, 16, Greams Road,
Chennai 600 006. ..Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, calling for the records in proceedings PAN: ATPPS0023F/ASST.YEAR 2010-11 contained in the impugned Assessment order dated 22.12.2017, on the file of the respondent herein and to quash the same.

For Petitioner : Mr.T.Vasudevan

For Respondent : Ms.Hemamurali Krishnan
(Senior Standing Counsel for IT)

ORDER

The writ on hand is filed challenging the assessment order dated 22.12.2017, passed under Section 144, read with Section 147 of the Income Tax Act, 1961 (for brevity 'the Act') to the assessment year 2010-11.

2.The petitioner contended that the notice issued under Section 148 of the Act, by the Deputy Commissioner of Income Tax, Non-Corporate Circle-12 (1), Chennai -6, on a dead person itself is illegal and all further proceedings culminated in the impugned assessment order dated 22.12.2017 is nothing but, nullity and void ab-initio.

3.The learned counsel appearing for the petitioner reiterated that the entire proceedings were concluded based on the notice issued on a dead person and therefore, the assessment order itself is to be set aside.

4.The learned Senior Standing Counsel, appearing on behalf of the respondent, objected the said contention by stating that those facts are to be adjudicated and the petitioner has filed this Writ Petition challenging the assessment order without exhausting the appellate remedy, as contemplated under Section 246 (A) of the Act.

5.This Court is of the considered opinion that the appellate authority is the final fact finding authority. The facts in dispute between the parties cannot be adjudicated in a writ proceedings, under Article 226 of the Constitution of India, which is to be undertaken by the appellate authority with reference to the original records and documents. Thus, exhausting the appellate remedy is of paramount importance and would be of greater assistance to the High Court to exercise the power of judicial review, under Article 226 of the Constitution of India. The High Court need not undermine the importance of the appellate remedy, as the statute contemplates such appellate remedy with a specific intention to redress the grievances of the assessees and such a benefit need not be denied to an assessee. Various principles for exhausting the appellate remedy and the circumstances under which the High Court may dispense with the appellate remedy are considered by this Court in number of Writ Petitions.

6.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.

7.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.

8.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.

9.In view of the facts and circumstances, the petitioner is at liberty to approach the appellate authority, by preferring an appeal in a prescribed format, following the procedures contemplated, within a period of four weeks from the date of receipt of a copy of this order. The appellate authority, in the event of receiving any such appeal from the petitioner, shall entertain the same, condone the delay if any, and adjudicate the appeal on merits, in accordance with law and by affording opportunity to the parties concerned, as expeditiously as possible.

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

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

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To
1.The Income Tax Officer,
Non-corporate ward-12(4),
223,BSNL Towers, 16, Greames Road,
Chennai-600 006.

2.The Deputy Commissioner of Income Tax,
Non-corporate circle, circle-12(1),
Chennai-6

+1cc to M/s.Hema Muralikrishnan, Advocate SR.No. 30126

W.P.No.1824 of 2018

PMK(CO)
B.VC(15.07.2021)