IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.10.2021

CORAM

THE HON'BLE MR.JUSTICE T.S.SIVAGNANAM
AND
THE HON'BLE MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

WRIT APPEAL NO.2533 OF 2021
AND
C.M.P.NOS.16492 & 16496 OF 2021

Savithri Naidu .. Appellant

-vs-

Income Tax Officer,
Non Corporate Ward 15(4),
Aayakar Bhawan, Wanapathy Building,
Room No.207, 2nd Floor,
NO.121, N.H.Road,
Chennai – 600 034. .. Respondent

Prayer:

Appeal under Clause 15 of Letters Patent against the order dated 23.06.2021 in W.P.No.3523 of 2021.

Prayer in W.P.No.3523 of 2021:

Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, calling for the records of the impugned order dated 29.12.2017 passed by the respondent against the petitioner for Assessment Year 2015-16 bearing PAN.No.ANTPS3318P and quash the same.

For Appellant : Mr.Vaibhav R.Venkatesh

For Respondent : Mr.A.P.Srinivas
Senior Standing Counsel

JUDGMENT
(Delivered by T.S.Sivagnanam, J.)

The appellant is the writ petitioner, who challenged an order of assessment under Section 143(3) of the Income Tax Act, 1961 ["the Act" for brevity] for the assessment year 2015-16.

The writ petition was filed during February 2018 and the Court having been convinced that the appellant has made out a prima facie case had granted an order of interim stay by order dated 16.02.2018. The said order continued to remain in force till the disposal of the writ petition by the impugned order dated 23.06.2021.

2.The appellant is before us challenging the order impugned on several grounds. Firstly on the ground that the subject matter of challenge is without jurisdiction as the notice under Section 143(2) of the Act was issued only on 19.09.2017 much after the mandatory six months period prescribed under the Act. More importantly, the learned counsel for the appellant would draw our attention to the arbitration which took place concerning immovable property at Sholinganallur. Elaborate submissions were made on the said issue and the learned counsel has taken us through the relevant portions of the award of the Arbitral Tribunal dated 14.09.2020. It is submitted that in terms of the award, a sum of Rs.23,73,34,000/- was directed to be paid to the appellant and the appellant is also entitled to re-claim the property and/or is entitled to receive the balance sale consideration and in such event, the question of capital gains does not arise at all. This according to the learned counsel for the appellant is a very vital issue which was not considered by the learned Single Bench. Further, it is submitted that the purchaser Company has gone into Corporate Insolvency Resolution process pursuant to the order dated 29.04.2021 passed by the National Company Law Tribunal [NCLT] and as a result of which the execution of the proceedings cannot go on as on date. Further, it is contended that capital gains will not arise because the very transaction is under dispute and was also earlier attached by the Income Tax authorities. Therefore, the order of assessment on presumption of capital gains was challenged by the appellant by filing a writ petition before this Court. Therefore, it is submitted that the learned Writ Court ought to have considered the jurisdictional issues and not relegated the appellant to avail the alternate remedy before the Commissioner of Income Tax [Appeals][CIT(A)].

3.Mr.A.P.Srinivas, learned Senior Standing Counsel appearing for the revenue sought to sustain the order and direction issued by the Court and submitted that all issues can very well be agitated by the appellant before the First Appellate Authority and all the facts can be gone into and a finding can be rendered which may not be possible in a writ petition when disputed questions of fact are to be considered.

4.We have elaborately heard Mr.Vaibhav R.Venkatesh, learned counsel appearing for the appellant and Mr.A.P.Srinivas, learned

Senior Standing Counsel appearing for the respondent.

5.It is true that the remedy of appeal before the CIT(A) as against the order of assessment dated 29.12.2017 is an effective and efficacious alternate remedy. Before the First Appellate Authority the assessee would be entitled to agitate all issues on facts as well as on law which would include the point regarding the assumption of jurisdiction by the respondent qua the period of limitation fixed under the statute. Therefore, we are of the view that it would be better for the assessee to avail the alternate remedy considering the complicated factual situation which has arisen in this case. We say so because there was a parallel round of litigation concerning the property which is the subject matter of the assessment, namely, with regard to the computation of capital gains. Therefore, the said factual issue qua the property is the substantial matter which requires to be considered, more particularly, when the assessee's stand is that in terms of the award of the Arbitral Tribunal dated 14.09.2020, the assessee is entitled to be paid a sum of Rs.23,78,34,000/- and she is entitled to re-claim the property and/or is entitled to receive the balance sale consideration and in such an event, the capital gains would not arise. More importantly the award of the Arbitral Tribunal dated 14.09.2020 has not attained finality as not only the assessee has filed a petition under Section 34 of the Arbitration and Conciliation Act, 1996, but the adversarial in the arbitration proceedings, namely, M/s.Land Mark Housing Projects Chennai Private Limited has also filed a petition to set aside the award. That apart, the NCLT has also passed orders under the provisions of the Insolvency and Bankruptcy Code and the purchaser Company has gone into Corporate Insolvency Resolution process. Therefore, we are of the clear view that the result of these proceedings would definitely have an impact on the assessment under the provisions of the Act which is required to be considered. However, such an exercise cannot be done by us in a petition under Article 226 of the Constitution of India. At this juncture, it would be worthwhile to note the results of the Arbitral Award dated 14.09.2020 which reads as follows:

> "233.In the Result:
>
> a.There shall be an award against the 1st Respondent alone for a sum of Rs.28,48,34,000/- towards sale consideration and Rs.25 Lakhs towards compensation (premium) and thus, the total award amount shall be Rs.28,73,34,000 (Rupees Twenty Eight Crores Seventy Three Lakhs and Thirty Four Thousand Only).
>
> b.The above said award amount of Rs.28,73,34,000/- shall carry interest at the rate of 9% per annum

from 01.04.2015 to till the date of award and at the rate of 12% per annum from the date of award till the date of realisation payable by the 1st respondent.

c.There shall be an order of attachment of the properties covered under the Exs.A13 to A16 and there shall be a charge against the said property for the award amount with interest.

d.There shall be an order of injunction restraining the 1st respondent from encumbering, alienating or disposing of the properties covered under Exs.A13 to A16 until the award is fully satisfied.

e.All the other claims made by the Claimants against the 1st respondent are dismissed as indicated above.

f.The claims made against the 2nd respondent are dismissed.

g.The counter claim made by the 2nd respondent is dismissed.

h.The Contempt Petition M.P.7/2018 stands disposed of as indicated above.

i.Miscellaneous Petition Nos.1, 3, 4 and 5 stand dismissed as infructuous.

j.Considering the nature of the claims, the rival contentions and all other circumstances, the parties are directed to bear their own cost."

6.In terms of the award, there is an order of attachment of the properties and there is a charge against the said property for the award amount with interest. Apart from that, there is an order of injunction restraining the first respondent, namely, the purchaser Company from encumbering, alienating and disposing of the properties. As against the disallowed claims the appellant is before this Court under Section 34 of the Arbitration and Conciliation Act. As against the award in favour of the appellant and as against the dismissal of the counter claim by the respondent before the Arbitral Tribunal, those parties are also before this Court under Section 34 of the Arbitration and Conciliation Act. Therefore, any orders to be passed pursuant to the award of the Arbitral Tribunal would have a direct impact on the assessment proceedings under the Act. Thus, for the above reasons, we agree with the ultimate conclusion of the learned Single Bench that the appellant should avail the alternate remedy of appeal before the CIT(A) but not for the reasons stated therein but for the reasons assigned by us in the preceding paragraphs.

7.We note that the order of assessment which was impugned in the writ petition is dated 29.12.2017. The writ petition was filed well within the period of limitation prescribed under the statute for filing a statutory appeal and the writ petition was disposed of on 23.06.2021. Therefore, the period during which the writ petition was pending, i.e. from February 2018 till the date of order passed in the writ petition or receipt of the certified copy of the order has to be necessarily excluded. That apart, since the writ petition was filed immediately after the assessment order was passed, the time taken for filing the writ petition also needs to be excluded for computing the limitation. Soon after the writ petition was dismissed, the appellant had filed the present appeal and there was a delay in the appeal getting numbered on account of certain miscellaneous petition which had to be filed by the appellant so as to enable the Registry to number the appeal. Therefore, the period spent before this Court both before the learned Single Bench as well as before us needs to be excluded while computing limitation. Therefore, there can be no difficulty for us to make an observation that in the event the appellant files an appeal before the CIT(A), the appeal shall be entertained without rejecting the same on the ground of limitation and we grant thirty days time from the date of receipt of a copy of this judgment within which time the appellant shall file the appeal before the CIT(A). As observed by us earlier, the factual matrix need to be gone into. The matter pertaining to the property in question is subject matter of an award by the Arbitral Tribunal and there is a challenge to certain portions of the award and there are proceedings before the NCLT which would all have a direct impact on the assessment as observed. Therefore, the appellant is granted liberty to file additional documents and raise additional grounds before the CIT(A) as this material was not available during the assessment proceedings. If such a request is made by the appellant, the CIT(A) shall permit the appellant to raise those grounds and decide the same subject to just objections by the revenue on merits and not on the entitlement of the appellant to raise additional grounds which we have permitted. In the said appeal, the appellant is given liberty to file a stay petition and seek for stay of the assessment proceedings on the ground which they have mentioned before us in this appeal as well as in the writ petition. Since the appellant had the benefit of interim order since February 2018 till the disposal of the writ petition on 23.06.2021, the assessment order dated 29.12.2017 shall remain stayed for a period of sixty days from the date of receipt of a copy of this order or till the disposal of the stay petition that would be filed by the appellant before the CIT(A) whichever is earlier.

8.In the result, the writ appeal stands disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

cse

To

Income Tax Officer,
Non Corporate Ward 15(4),
Aayakar Bhawan, Wanapathy Building,
Room No.207, 2nd Floor,
NO.121, N.H.Road,
Chennai - 600 034.

+1cc to Mr.A.P.Srinivas, Advocate, S.R.No.52873

W.A.No.2533 of 2021

SSV(CO)
PM/01/11/2021