IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.07.2021

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.4072 of 2017
and
W.M.P.No.4221 of 2017

M.Ramalingam (HUF),
Rep., by its Kartha Mr.R.Prakash,
111, Oor Gounder Thottam,
Anna Nagar, Vellappanaickenpalayam,
Chinnavedampatti Post,
Coimbatore-641 006. .. Petitioner

[Cause title substituted vide order dated 26.07.2021 in W.M.P.No.16874 of 2021 in W.P.No.4072 of 2017]

-vs-

The Income Tax Officer,
Non-Corporate Ward – 2 (2),
63, Race Course Road,
Coimbatore-641 018. .. Respondent

Prayer : Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorari to call for the records on the file of the respondent and quash the impugned order issued under Section 143(3) read with Section 147 of the Income Tax Act, 1961 in PAN: AALHM5629J dated 21.12.2016.

For Petitioner : Mr.Veerapathiran Prasanth
for Mr.R.Sivaraman

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

ORDER

The final assessment order dated 21.12.2016, passed by the Assessing Officer under Section 143(3) read with Section 147 of the Income Tax Act, 1961 (hereinafter referred to as "the Act") is under challenge in the present writ petition.

2.The original petitioner, Mr.M.Ramalingam (HUF), during the pendency of the writ proceedings, expired and subsequently, his legal heir was impleaded as petitioner in the present writ petition. During the assessment year 2009-10, the original petitioner sold his agricultural land at Chinnavedampatti, Coimbatore on 11.08.2008 vide Document No.5534 of 2008 through his Power of Attorney, that is, P/A Holder. Admittedly, no return of income was filed by the original petitioner. Notice under Section 148 of the Act was issued on 03.02.2011 to the petitioner to assess the escaped long term capital gains. Thereafter, vide proceedings dated 03.02.2011, the Assessing Officer in clear terms issued a communication stating that "from the information available with the Department, it is understood you have sold agriculture land to the extent of 3.10 acres on 11.08.2008 for a consideration of Rs.6.9 crores in the capacity of HUF Status to M/s.Martin Plaza Private Limited through Power of Attorney Shri E.K.Kumaresan. The above property is located in Chinnavedampatti and comes within the purview of capital asset under Section 2(14) of the Income-tax Act, 1961. Further, it is noticed that you have failed to file return of income for the relevant assessment year i.e., 2009-10 for the income earned under the head Capital Gain. In this regard, you are required to file return of income within the time allowed as per the 148 Notice enclosed herewith".

3.With reference to the said reasons, the petitioner submitted the returns dated 31.03.2011 and an assessment order was passed on 21.12.2011. The matter went up to the Income Tax Appellate Tribunal 'A' Bench, Chennai and the Tribunal directed the Assessing Authority to assessee/reassess and issue an order accordingly. Pursuant to the orders, the process of re-assessment had been completed and an assessment order was passed in proceedings dated 21.12.2016, which is under challenge in the present writ petition.

4.An opportunity was provided to the writ petitioner to defend his case in the manner prescribed. Admittedly, the writ petition is filed challenging the final order of assessment passed under Section 143(3) read with Section 147 of the Act. The said assessment order is an appeable order and the petitioner admittedly, has not exhausted the appellate remedy contemplated under the provisions of the Act. Thus, this Court is not inclined to entertain the factual merits, which all are raised in this writ petition.

5.The learned counsel for the petitioner raised grounds on merits, which deserve an adjudication by the appellate authority with reference to the documents and evidences to be produced. Such an elaborate adjudication cannot be done in a writ proceedings with reference to the disputed facts and more over the appellate authority is the final fact finding authority and therefore, the petitioner has to avail the opportunity provided under the statute for the purpose of redressal of his grievances.

6.Exhausting the appeal remedy is the rule. Dispensing with the appellate remedy is an exception. Power of discretion is to be exercised discretely only if there is an imminent urgency or damage, if any, caused or there is any threat, which cannot be compensated then alone, the extraordinary power may be invoked for the purpose of granting relief by dispensing with the appellate remedy.

7.Power of judicial review of the High Court under Article 226 of the Constitution of India is to scrutinise the processes and the procedures adopted by the competent authorities for arriving a particular decision in accordance with law, but not the decision itself. Thus, the High Court cannot entertain an adjudicative process regarding the mixed question of fact and law with reference to the documents and evidences in original. High Court cannot resolve the disputed issues between the parties only based on the affidavits filed in the writ petitions. There is a possibility of omissions and commissions. Thus, adjudication before the appellate authority with reference to such disputed findings of the original authority would be of greater importance.

8.In view of the facts and circumstances, the petitioner is at liberty to prefer an appeal to the jurisdictional appellate authority within a period of four weeks from the date of receipt of a copy of this order in a prescribed form and by complying with the rules. In the event of receiving any such appeal from the petitioner, the appellate authority shall adjudicate the same on merits and in accordance with law by affording opportunity to the petitioner and dispose of the same as expeditiously as possible.

With the above directions, this writ petition stands disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

abr

To

The Income Tax Officer,
Non-Corporate Ward - 2 (2),
63, Race Course Road,
Coimbatore-641 018.

+1cc to Mr.A.P.Srinivas, Advocate (SR No.36001)

W.P.No.4072 of 2017

SSV (CO)
PR (17/08/2021)