IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.12.2021

CORAM:

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.NO.27511 OF 2021
AND
W.M.P.NOS.29037, 29038, 29039 & 29042 OF 2021

[Video Conferencing]

Santosh Kumar Kannodia,
Race Course Mansion,
2nd Floor, 8/1-M, Race Course,
Near Thomas Park Bus Stop,
Coimbatore – 641 018. ... Petitioner

-Vs.-

The Assistant Commissioner
of Income Tax,
Central Circle – III,
63, Race Course Road,
Coimbatore - 641 018. ... Respondent

PRAYER:-

Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus calling for the records in the Assessment Order bearing reference No.ITBA/COM/F/17/2021-22/1037354410(1) dated 29.11.2021 and quash the same as being ex-facie illegal and arbitrary and direct the Respondent to hear the petitioner and pass order on merits after providing copies of the impounded materials and allowing the petitioner to respond to the same.

For Petitioner : Ms.Janani Shankar
For Mr.R.Parthasarathy

For Respondents : Mr.A.N.R.Jayapratap
Junior Standing Counsel

ORDER

This is the second round of litigation initiated by the petitioner. The petitioner had earlier filed a Writ Petition in W.P.No.34420 of 2013 wherein the assessment order passed by the second respondent therein viz., Assistant Commissioner of Income Tax on 20.03.2013 was set aside and the matter was remitted back to the respondent herein to pass a speaking order. The relevant portion of the said order reads as follows:

> "7.In the present case, the Assessing Officer has given opportunity twice for personal hearing and the said proceedings were not utilized by the assessee. No objections are filed. Thus, the petitioner is at liberty to participate in the process of the proceedings by submitting his objections and in the event of filing any such objections, the said objections are to be considered and the same is to be disposed of as per the directives of the Hon'ble Supreme Court. Thereafter, the Assessing Officer has to proceed with the process of reassessment and order of reassessment in the manner known to law. After passing an assessment order, if the petitioner is still aggrieved, then the Appellate remedy is to be exhausted under the provisions of the Income Tax Act.
>
> 8.This being the procedures to be followed, the grounds raised on merits at this point of time, cannot be adjudicated in a writ proceedings before the High Court and therefore, the petitioner is at liberty to participate in the process of reassessment proceedings.
>
> 9.With these directions, the writ petition stands dismissed. No costs."

2. Thereafter, series of communications were exchanged which has culminated in the impugned order dated 29.11.2021. Though it is argued on behalf of the petitioner that the order has been passed belatedly, what is evident is that the petitioner is attempting to sustain the longevity of the litigation in this second round of litigation, once again.

3. As the order passed by this Court on 03.08.2021 is very clear, the petitioner has to only work out his remedy before the Appellate forum. I do not find any merits in this Writ Petition. The petitioner has an alternate remedy under Section 246A of the Income Tax Act, 1961 and can also approach the respondent under Section 220 of the Income Tax Act, 1961 for interim protection.

4. In view of the same, this Court is inclined to dismiss the Writ Petition with liberty to the petitioner to work out his remedy under Section 246A of the Income Tax Act, 1961 and for stay of recovery proceedings in term of Section 220 of the Income Tax Act, 1961. The petitioner is given 30 days time to file such appeal and application. If such appeal and the application are filed, the respective authority shall pass appropriate orders on merits and in accordance with law.

5. In fine, the Writ Petition stands dismissed with the above observations. Consequently, connected miscellaneous petitions are closed. No costs.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

pgp

To

The Assistant Commissioner of Income Tax,
Central Circle - III,
63, Race Course Road,
Coimbatore - 641 018.

+1cc to Mr.A.P.Srinivas, Advocate, S.R.No.69200
+2ccs to Mr.R.Parthasarathy, Advocate, S.R.No.68957

W.P.NO.27511 OF 2021

SSI(CO)
PBS/12/01/2022