IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :19.07.2021

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THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.Nos.2142 & 2143 of 2017

Shri R.Srinivasan ...Petitioner in both W.Ps

Vs

The Income Tax Officer
Non-Corporate Ward 3(1)
No.63, Race Course Road,
Coimbatore. ... Respondent in both W.Ps

Prayer in W.P.No.2142 of 2017: Writ Petition filed Under Article 226 of the Constitution of India to issue of Writ of Certiorarified Mandamus, calling for the records of the respondent in Assessment Order dated 09.12.2016 bearing PAN:CEFPS0550C for AY 2009-10 passed by the respondent as against this petitioner and quash the same and direct the respondent to drop all further proceedings.

Prayer in W.P.No.2143 of 2017: Writ Petition filed Under Article 226 of the Constitution of India to issue of Writ of Certiorarified Mandamus, calling for the records of the respondent in Assessment Order dated 09.12.2016 bearing PAN:CEFPS0550C for AY 2012-13 passed by the respondent as against this petitioner and quash the same and direct the respondent to drop all further proceedings.

For Petitioner : Mr.P.J.Rishikesh
[in both W.Ps]

For Respondent : Mr.A.P.Srinivas
Senior Standing counsel
For Income Tax
[in both W.Ps]

COMMON ORDER

The writs on hand are filed, questioning the validity of the assessment order dated 09.12.2016 for the Assessment Years 2009-10 and 2012-13.

2. The learned counsel appearing on behalf of the writ petitioner mainly contended that there cannot be any imposition of tax twice in respect of the same transactions. One Mr.D.Ramagopal, who is the nephew of the petitioner, has paid the tax as applicable in respect of the particular transaction and therefore, the very assessment orders passed by the respondent are without jurisdiction and therefore, the orders of assessment are to be quashed.

3. The writ petitioner earlier filed W.P.Nos.43982 and 43983 of 2016, questioning the validity of the reopening of assessment under Section 147/148 of the Act. This Court passed a common order on 22.12.2016 and the relevant paragraph 5 reads as under:

> "5. Mr.Chopda, who appears for the Revenue says that the petitioner's assessments for the years 2009-10 and 2012-13 have been re-opened on a protective basis, to avert a difficult situation, which could arise, if at some stage, Shri.D.Ramgopal were to take the stand that the subject income/capital gains should be assessed in the hands of the petitioner. In other words, learned counsel says that protective assessment in the hands of the petitioner is made, so that, the Revenue is not left without a remedy. Mr.Chopta says that clearly, there will be no tax liability vis-a-vis, the petitioner, in case, such a stand is not taken by Shri.D.Ramgopal."

4. Relying on the said judgment, the learned counsel for the petitioner reiterated that even the order passed by this Court that the reopening was done on a protective basis and therefore, the penalty imposed is not traceable under the provisions of the Income Tax Act. The said Mr.D.Ramagopal, also challenged the actions of the respondent on the same line and his appeal is now pending before the Commissioner of Income Tax(Appeals). The petitioner has questioned the reopening of assessment as well as the assessment orders now passed.

5. The various grounds raised in the writ petitions deserve an elaborate adjudication on merits and in accordance with law based on the documents and evidences to be scrutinized. Such an adjudication cannot be done by the High Court in a writ proceedings under Article 226 of the Constitution of India. There are two way of raising jurisdictional point in recent days by the litigants. The jurisdictional point is mostly raised now-a-days. Relying on certain facts and circumstances, which all are culled out from the documents and evidences. The jurisdictional point culled out in that manner cannot be entertained by the High Court under Article 226 of the Constitution of India. For every error, mistake, non-

appreciation of documents or erroneous appreciation or otherwise cannot be construed as lack of jurisdiction. Only in cases, where if the provisions of the Act is not providing any power to the authority and directly hit any of the provisions of the Income Tax Act, then alone, the Court can considered the case, where there is a lack of jurisdiction for the purpose of entertaining a writ petition. In order to sustain the entertainability of the writ petitions, the practice is developed that every case, jurisdiction point is raised, which all are mostly based on the factual aspects of the matter. Thus, the High Court is expected to be cautious, while entertaining the writ petitions even in such cases, where the petitioners have raised the point of jurisdiction. The point of jurisdiction is such warranting an interference must be the consideration for the purpose of entertaining a writ petition and even an iota of doubt in respect of the factual adjudication, then the matter is to be allowed to go on the hands of the Appellate authority, who is the final fact finding authority under the provisions of the Act.

6. The importance of the Appellate remedy contemplated under the Statute can never be undermined at any circumstances. The final fact finding made by the Appellate authority would be of valuable assistance for the High Court for the purpose of exercise of power of judicial review under Article 226 of the Constitution of India. In the event of entertaining the writ petition based on the order-in-original, the litigants are also deprived of their right of appeal and further, there is a possibility of non-adjudication of certain vital facts or commissions or commissions or otherwise. Thus, these aspects are to be borne in mind, while entertaining a writ petition directly against the orders in original.

7. The legislative intention for providing an appeal is that the aggrieved person must be given an opportunity to redress their grievances with reference to the original records. The Appellate authorities are bound to verify the original records, if necessary. Such a valuable opportunity need no be denied to the litigants aggrieved.

8. This apart, the Appellate authority, Taxation Tribunals are manned by the experts in taxation. Therefore, adjudication of the facts with reference to the documents by such experts would be of greater benefit to the litigant as well as to the Constitutional Courts. Thus, the aggrieved person, in all circumstances, must be allowed to prefer an appeal in the manner prescribed and after exhausting the Appellate remedy, he has to approach the proper Forum.

9. This being the principles to be adopted, this Court is of the considered opinion that the petitioner has to adjudicate all the disputed issues even in case, he relies of the orders of the Court, documents etc., and redress his remedy in the manner prescribed. This being the principles to be followed, the petitioner is at liberty to prefer an appeal before the jurisdictional Appellate authority in a prescribed format within a period of four weeks from the date of receipt of a copy of this order and by complying with the provisions of the Statutes and Rules. If any such appeal is filed by the petitioner, the Appellate authority is empowered to adjudicate the same on merits and in accordance with law and by affording an opportunity to the writ petitioner and dispose of the same as expeditiously as possible.

10. With these directions, both the writ petitions stand disposed of. No costs.

Sd/-
Assistant Registrar(CS-VIII)

//True Copy//

Sub Assistant Registrar

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To

The Income Tax Officer
Non-Corporate Ward 3(1)
No.63, Race Course Road,
Coimbatore.

+1cc to Mr.A.P.Srinivas, Advocate, S.R.No.34162
+1cc to Mr.P.J.Rishikesh, Advocate, S.R.No.34544

W.P.Nos.2142 & 2143 of 2017

PMK(CO)
CB(10/08/2021)