BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 22.03.2021
CORAM
THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN
W.P.(MD)Nos.2970 & 2972 of 2020
and
WMP(MD)Nos.2498, 2500, 2501 & 2503 of 2020

Sadhasivam Panneerselvam ... Petitioner
in WP(MD)No.2970 of 2020

M/s.D.B.S.Agencies,
Rep.by its Partner Mr.R.Sivakumar

... Petitioner
in WP(MD)No.2972 of 2020

Vs.

The Assistant Commissioner of Income Tax,
Circle 2(1), Trichy,
O/o. the Assistant Commissioner of Income Tax,
3rd Floor, Main Building,
Williams Road, Cantonment,
Trichirappalli – 620 001. ... Respondent
in both cases

Prayer in WP(MD)No.2970 of 2020 : Writ petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, to call for the records of the respondent in PAN AJKPP9427B vide Order No.ITBA/AST/M/147/2019-20/1022361939(1) dated 14.12.2019 and quash the same as ex-facie illegal, arbitrary without jurisdiction and against the principles of natural justice.

Prayer in WP(MD)No.2972 of 2020 : Writ petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, to call for the records of the respondent in PAN AACFD9887G vide Order No.ITBA/AST/S/144/2019-20/1023401284(1) dated 30.12.2019 and the consequential demand in PAN AACFD9887G vide Order No.ITBA/AST/S/156/2019-20/1023401303(1) dated 30.12.2019 and quash the same as ex-facie illegal, arbitrary without jurisdiction and against the principles of natural justice.

in both cases :

For Petitioner : Mr.K.Soundarrajan
For Respondent : Mr.N.Dilipkumar,
Standing counsel

COMMON ORDER

Heard the learned counsel on either side.

2.The orders impugned in this writ petition was passed under Section 144 of the Income Tax Act, 1961 whereby the assessing authority passed the same on best judgment assessment basis. The learned standing counsel in Para 4 of the counter affidavit would point out that in respect of the impugned order, the petitioner has already filed an appeal before the appellate authority on 18.01.2020 and that the appeal petition is pending before the Commissioner of Income Tax (Appeals). Therefore, his contention is that the present writ petition is not maintainable.

3.I sustain the said objection. It is well settled that a litigant cannot pursue parallel remedies. Of course, in the affidavit filed in support of the writ petition, it has been fairly stated that the petitioner had already filed an appeal. But then, the claim is made that the appellate authority cannot decide the issue raised in the writ petition.

4.I cannot appreciate such a conduct. Mere filing of the appeal before the appellate authority will not foreclose the right of the petitioner to move the writ court. But then, the appeal should have been withdrawn. Without withdrawing the appeal, one cannot parallely maintain the two. In any event, the learned standing counsel would point out that the appellate authority is very much competent to go into all the contentions raised in the writ petition.

5.Therefore, leaving open the right of the petitioner to pursue the appeal remedy, this writ petitions are dismissed. It is made clear that I have not gone into the merits of the matter. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

skm

Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

The Assistant Commissioner of Income Tax,

Circle 2(1), Trichy,

O/o. the Assistant Commissioner of Income Tax,

3rd Floor, Main Building,

Williams Road, Cantonment,

Trichirappalli - 620 001.

+2 CC to M/s.N.DILIP KUMAR,Advocate (SR-13087& 13088[F] dated 23/03/2021)

+2 CC to M/s.K.SOUNDARARAJAN,Advocate (SR13377&13378[F] dated 24/03/2021)

W.P.(MD)Nos.2970 & 2972 of 2020
22.03.2021

RK (21.04.2021) 3P 6C