IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.04.2022

CORAM

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

W.P.No.7151 of 2022
and
W.M.P.Nos.7174 & 7175 of 2022

L.R.Babu ... Petitioner

Vs

1. The Assistant Commissioner of Income Tax,
   Non-Corporate Circle 22(1) (TBM) Chennai,
   1st Floor, Tambaram (Business Range),
   Ramakrishna Street, West Tambaram,
   Chennai – 600 045.

2. The Additional Commissioner of Income Tax,
   Non-Corporate Range-22, Chennai (TBM),
   Ramakrishna Street, West Tambaram,
   Chennai – 600 045.

3. The Additional / Joint / Deputy / Assistant Commissioner,
   of Income Tax / Income Tax Officer,
   National e-Assessment Centre,
   Delhi. ... Respondents

Prayer : Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorari to call for the records on the file of the 3rd respondent and quash the impugned order in PAN: ABSPL6664N dated 16.03.2022 in DIN: ITBA/AST/S/147/2021-22/ 1040896807(1) under Section 147 r/w Section 144B of the Income Tax Act, passed by the 3rd respondent for the assessment year 2016-17, along with notice in PAN: ABSPL6664N, dated 31.03.2021 in DIN & Notice No.ITBA/AST/S/148/2020-21/1032086813 (1) issued under Section 148 of the Act for the Assessment Year 2016-17 issued by the first respondent.

For Petitioner : Mr.N.V.Balaji

For Respondents : Mr.D.Prabhu Mukunth Arunkumar
Junior Standing Counsel

ORDER

The prayer sought for herein is for a Writ of Certiorari to call for the records on the file of the 3rd respondent and quash the impugned order in PAN: ABSPL6664N dated 16.03.2022 in DIN: ITBA/AST/S/147/ 2021-22/ 1040896807(1) under Section 147 r/w Section 144B of the Income Tax Act, passed by the 3rd respondent for the assessment year 2016-17, along with notice in PAN: ABSPL6664N, dated 31.03.2021 in DIN & Notice No.ITBA/AST/S/148/2020-21/1032086813 (1) issued under Section 148 of the Act for the Assessment Year 2016-17 issued by the first respondent.

2. In this writ petition, challenge has been made as against the assessment order dated 16.03.2022 passed under Section 147 read with Section 144B of the Income Tax Act, 1961 (in short 'the Act') for the assessment year 2016-17.

3. The main reason for challenging the assessment order, without even going before the Appellate Authority, according to Mr.N.V.Balaji, learned counsel appearing for the petitioner assessee that, even the procedure contemplated by the Hon'ble Supreme Court in the matter of GKN Driveshafts (India) Limited Vs. Income Tax Officer and others reported in (2003) 259 ITR 19 (SC) has not been followed. Therefore, according to the learned counsel for the petitioner, since the Assessing Authority does not have the jurisdiction, the present assessment order made under Section 147 is without jurisdiction and therefore is liable to be set aside, he contended.

4. Heard Mr.D.Prabhu Mukunth Arunkumar, learned counsel appearing for the respondent Revenue also, who would submit that, as against the assessment order on merits, an appeal has to be filed before the Commissioner (Appeals) by the petitioner assessee, therefore, this writ petition cannot be entertained.

5. Having considered the said submission made by the learned counsel appearing for the parties and taking note of the fact that the impugned order is an assessment order, as against which, appeal can very well be filed by the assessee before the Commissioner (Appeal), where, the issue as to whether the Assessing Authority has got jurisdiction to reopen the proceedings under Section 147 and pass an order which is culminated in the impugned order dated 16.03.2022 can be raised as a preliminary issue and if that issue is raised, the same can be considered and decided on merits by the Appellate Authority. In that view of the matter, this Court is inclined to dispose of this writ petition with the following orders:

(i) That the petitioner is, for the aforestated reasons, relegated to approach the Appellate Authority by filing an appeal against the impugned order of assessment, where, it is further open to the petitioner to raise the jurisdiction point as a preliminary issue, for which, whatever the grounds being urged before this Court in this writ petition can very well be agitated and once such preliminary issue is raised, the same shall be considered and decided on merits as a preliminary issue by the Appellate Authority before going to the merits of the assessment order.

(ii) Till such a preliminary issue is decided by the Appellate Authority, no coercive steps shall be taken pursuant to the assessment order for recovery of the amount including making any demand and penalty etc.

6. With this observation and direction, this Writ Petition is disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CCC)

//True Copy//

Sub Assistant Registrar

Sgl

To

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3. The Additional / Joint / Deputy / Assistant Commissioner,
of Income Tax / Income Tax Officer,
National e-Assessment Centre,
Delhi.

+1cc to Mrs.Hema Muralikrishnan, Advocate SR. No. 22500
+1cc to Mr.N.V.Balaji, Advocate SR. No. 22837

W.P. No.7151 of 2022

AKII (CO)
PR (20/05/2022)