IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.12.2022

CORAM

THE HON'BLE MR. JUSTICE S. VAIDYANATHAN

AND

THE HON'BLE MR. JUSTICE MOHAMMED SHAFFIQ

W.A. No. 929 of 2022
&
C.M.P. Nos. 6067 & 6069 of 2022

Shri. Bondalapati Shivaji Rao ..Appellant

Vs.

The Assistant Commissioner of Income Tax,
Central Circle 1 (2), Chennai,
3rd Floor, Investigation Building,
New No. 46, Mahatma Gandhi Road,
Nungambakkam, Chennai – 600 034. ..Respondent

Prayer: Writ Appeal as against the order dated 04.01.2022 passed in W.P. No. 23618 of 2021.

For Appellant :: Mr.N.V. Balaji

For Respondent :: Mrs.S. Premalatha,
Junior Standing Counsel

J U D G M E N T

S. VAIDYANATHAN, J.
AND
MOHAMMED SHAFFIQ, J.

The present writ appeal has been filed challenging the order dated 04.01.2022 passed by the learned Single Judge of this Court wherein the writ petition has been dismissed on the premise that an alternate remedy is available to the appellant/writ petitioner and also that the matter involves disputed questions of fact, thus, does not warrant interference under Article 226 of the Constitution of India.

2. Aggrieved by the above order of the learned Single Judge, the appellant had filed the present Writ Appeal. It may be relevant to extract the findings of the learned Single Judge wherein it has been found that disputed questions of fact are involved while concluding that the order does not warrant interference under Article 226 of the Constitution of India.

> *"2. The dispute in the present writ petition arises on account of transaction allegedly entered into between the petitioner and the purchaser of the land through Exchange Deed dated 06.06.2018 Registered as Document*

No.4001/2018. The proprietor of M/s. Saravana Stores Brahmandamal, Mr.Y.Pondurai, Proprietor had purchased several parcels of land from various land owners including the petitioner, former had engaged the services of various real estate brokers and land aggregators who interacted with the petitioner and other had allegedly paid cash to the petitioner and his wife for exchange of land.

3. Later, a search under Section 132 of the Income Tax Act, 1961 was carried out at the premises of Mr.Y.Pondurai, Proprietor of M/s.New Saravana Stores Brahmandamai, his brother~in~law and one Sreejith and statements were recorded from them and loose sheets pertaining to the transaction regarding the sale and purchase of land was recovered. Pursuant to the search, statement was also recorded on 18.06.2019 from the petitioner before the Deputy Director of Income Tax, Investigation Unit, Chennai. The copy of said statement has been filed along with the typed set of papers.

4. It is the case of the petitioner that the copy of the statement recorded from Sreejith and was not given to the petitioner. It is further case of the petitioner that the *petitioner wanted to cross examine the person, whose statement were recorded but was denied. That apart, it is submitted that the statement dated 18.06.2019 was obtained from the petitioner but a copy of the same was furnished to the petitioner only on 05.04.2021 wherein the petitioner reiterated to the statement given on 18.06.2019.*

....

10. Heard the learned counsel for the petitioner and the learned Junior Standing Counsel for the respondent. I have also perused the impugned order dated 30.09.2021. Statements were obtained from the petitioner that cash was received both by the petitioner and his wife at the time of execution of Exchange Deed dated 06.06.2018 vide Registered Document No.4001 of 2018. There are several disputed question of facts in this case, as to whether the petitioner had given a voluntary statement or not after search was conducted and the premises of the aggregator and that of the buyers if the property and the petitioner.

11. The statement had given by the petitioner admits the receipt of Rs.28,84,00,000/~ in cash. The petitioner had affixed his signature in English. It is therefore not open to the petitioner state that the petitioner did not understand the contents of the statement given by the petitioner while signing *the aforesaid statement on 18.06.2019 merely because he did not understand Tamil and his mother tongue was only Telugu.*

12. That apart, at the end of the statement it is clearly recorded that one Shanmugam had read over and explained the contents of the statement to the petitioner. The petitioner has retracted from the statement given on 18.06.2019 only after the respondent proceeded to issue show cause notice dated 13.04.2021. The petitioner has retracted from the statement given on 18.04.2021 long after it was given. In any event, the petitioner has an alternate remedy before the Appellate Commissioner under Section 246~A of the Income Tax Act, 1961 CIT (Appeals). Disputed question of facts cannot be decided in a summary proceedings under Article 226 of the Constitution of India. Therefore, I am not inclined to entertain the writ petition."

On a perusal of the impugned order of the learned Single Judge, we find that the reason for exercising restraint in interfering under Article 226 of the Constitution of India, was the existence of disputed questions of fact. It is trite law that whenever there are disputed questions of fact, interference under Article 226 of the Constitution of India is not warranted.

3. To a pointed question to the learned counsel for the appellant as to the infirmity if any, in the light of the above finding by the learned Single Judge namely involvement of disputed questions of fact, it was submitted by the learned counsel for the appellant that certain sums have already been recovered and therefore, he would submit that though he would file an appeal, there shall not be any further recovery.

4. We are afraid that such a request cannot be entertained. Once statutory remedy is resorted to, the question of considering the stay application would fall within the exclusive jurisdiction/realm of the Appellate Authority and any direction as prayed for by the appellant would result in exercising jurisdiction by this Court, which otherwise vest with the Appellate Authority and the same is not permissible.

5. Taking note of the facts and circumstances and also the pleadings by the appellant, this Court is of the view that the appellant may file an appeal against the impugned order of assessment within a period of

three weeks from today, in any event, on or before 31.12.2022. It is also open to the appellant to file an application for stay. If such an application is filed before the Appellate Authority, the same shall be considered taking into account the amounts already recovered. The Appellate Authority shall decide the stay application within a month from the date of filing of such application and the appeal itself shall be disposed of within a period of three months from the date of filing of appeal. Until the stay application is disposed of, there shall not be any coercive proceedings. It is made clear that the Appellate Authority shall decide the matter uninfluenced by any of the observations made by the learned Single Judge, which are only made for the purpose of disposal of the writ petition.

6. The writ appeal stands disposed of with the above observation. No costs. Connected C.M.Ps are closed.

(S.V.N.J.) (M.S.Q.J.)
nv 08.12.2022

S. VAIDYANATHAN,J.
AND
MOHAMMED SHAFFIQ,J.

nv

To:
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