W.M.P.No.17453 of 2022 in
W.P.No.10708 of 2022

R.SURESH KUMAR, J.

This miscellaneous petition has been filed with a prayer seeking to modify the order passed by this Court dated 27.04.2022 passed in W.P.No.10708 of 2022 by deleting the contents of paragraph 10 concerning the two weeks' time granted to file an appeal before the Commissioner (Appeals).

2. Heard Mr.M.V.Swaroop, learned counsel appearing for the petitioner and Mr.D.Prabhu Mukunth Arun Kumar, learned Standing Counsel appearing for the respondent.

3. By order dated 27.04.2022 while disposing the writ petition i.e. W.P.No.10708 of 2022, this Court passed the following order:

> "7. I have considered the said submissions made by the learned respective counsel. In this context, whether the petitioner has gained anything from the deceased assessee through their Bank accounts to the extent of Rs.70 Lakhs and if so, whether the said amount belongs to the original assessee Venkatadri or

somebody's and within the said amount, since the tax due under the impugned order to the extent of Rs.61 Lakhs would be covered or not, are the factual matrix, which can be gone into only by the Appellate Authority and not by this Court.

8. Moreover, there is no violation of principles of natural justice in this case as the petitioner also has been issued with a notice on the aforestated circumstances and after giving such an opportunity to the petitioner, the impugned order of assessment since been passed, it cannot be assailed before this Court on the ground of violation of principles of natural justice or any other valuable ground, under which the extraordinary jurisdiction of this Court can be invoked.

9. In that view of the matter, this Court has no hesitation to hold that this writ petition cannot be entertained for such reasons as it is not maintainable before this Court by relegating the petitioner to go before the Appellate Authority for filing a quantum appeal before the Commissioner (Appeals).

10. Hence, this Writ Petition is dismissed with the aforesaid observation. However, the learned counsel for the petitioner seeks two weeks time to file quantum appeal and the petitioner is permitted to file quantum appeal before the Commissioner (Appeals) within two weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petitions are closed."

4. After hearing the matter i.e. the main writ petition, this Court on

merits held that the writ petition cannot be entertained for reasons stated therein as it was not maintainable before this Court thereby by relegating the petitioner to go before the Appellate Authority for filing a quantum appeal before the Commissioner (Appeals), the writ petition was to be dismissed accordingly it was dismissed.

5. After such a conclusion arrived at by the Court, the learned counsel who appeared for the petitioner sought two weeks time to file quantum appeal and such permission was granted to file the said appeal before the Commissioner (Appeals) within two weeks from the date of receipt of a copy of the order, that has also been recorded in para 10 of the order dated 27.04.2022.

6. Only in that background now the present miscellaneous petition has been filed to modify the order where the affidavit averments filed in support of this miscellaneous petition states that, the learned counsel appearing for the petitioner in fact had requested for time before the learned Judge to prefer appeal within two weeks time and that was sought for with complete intention of availing the statutory remedy available to the petitioner under the Income

Tax Act. However in the light of the subsequent advise the petitioner had received, he had chosen to file appeal against the order dated 27.04.2022. Therefore in that context, the petitioner by this petition has requested the Court to delete the aforementioned observation concerning the submission for granting two weeks time for the purpose of filing a quantum appeal before the Commissioner (Appeals).

7. It is a complete abuse of process of law on the part of the petitioner to file this miscellaneous petition to seek for deletion of such order i.e. para 10 of the order dated 27.04.2022 in the name of modification.

8. If there is any error apparently on the face of the record that has crept in due to inadvertence, such kind of clarification or modification may be possible. However, here knowing well that the writ petition was to be dismissed and the Court has already decided to dismiss it on the ground of non-exhausting the alternative remedy and the petitioner also was relegated to go before the Appellate Authority to file the regular quantum appeal and after came to know about the outcome of the writ petition, such a request was made consciously by the learned counsel for the petitioner seeking two weeks time to

prefer appeal before the Appellate Authority and thereafter after passing the order and receiving an order copy, now they have come with a different plea stating that subsequent advise was received by the petitioner to prefer the intra-Court appeal against the order of the Writ Court dated 27.04.2022, therefore the time sought for on behalf of the petitioner to file appeal before the Appellate Authority is to be deleted.

9. It is very ridiculous to note that such a reason is given by the petitioner to seek for deletion of para 10 of the order referred to above in the name of modification which is thoroughly impermissible, hence this Court is not inclined to accept this miscellaneous petition, hence it is to be rejected, accordingly this Miscellaneous Petition is dismissed.

25.07.2022

Sgl

R.SURESH KUMAR, J

Sgl

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