



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.02.2022

CORAM

THE HONOURABLE MR.JUSTICE R. MAHADEVAN
AND
THE HONOURABLE MR.JUSTICE J.SATHYA NARAYANA PRASAD

W.A. No.2894 of 2021
and
CMP.No.19494 of 2021

M/s.British Agro Products (India) P.Ltd
(Rep. by its Managing Director, Dr. Akilan Ramnathan)
No.9, State Bank Officers Colony
Shastri Nagar, Adyar
Chennai - 600 020 ..Appellant/Petitioner

Versus

1. The Assistant Commissioner of Income Tax
National e-faceless Assessment Centre, Delhi
E-Ramp, Jawaharlal Nehru Stadium
Delhi - 110 003
2. The Income Tax Officer
Corporate Ward -1 (3)
Income Tax Department
121, Nungambakkam High Road
Chennai - 600 034
3. The Principal Commissioner of Income Tax - 1
121, Nungambakkam High Road
Chennai - 600 034 ..Respondents/Respondents

Writ Appeal filed under Clause 15 of Letters Patent against the order dated 22.10.2021 passed by the learned single judge in W.P. No.22071 of 2021.

Prayer in W.P. No.22071 of 2021: Writ Petition filed under Section 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus to call for the records of the Writ Petitioner Company on the file of the First Respondent to quash the impugned order dated 23.09.2021 passed u/s 143(3) r.w.s 144B of the Act for the Assessment year 2018-2019 in ITBA/AST/S/143 (3)/2021-22/1035833472(1) and consequently direct the first Respondent to complete the fresh assessment for the assessment



year 2018-19 after granting reasonable /sufficient opportunity of hearing.

For Appellant : Mr. P.S.Raman, senior counsel
for Mr.M.Velmurugan

For Respondent : Mr. Prabhu Mukunth Arunkumar

JUDGMENT

(Judgment of the Court was delivered by R. MAHADEVAN, J.)

Heard both sides and perused the documents placed before this court.

2. According to the appellant, they are one of the largest growers of white button mushrooms in the state of Tamil Nadu and has a state-of-the-art growing facility and sells its edible white button mushroom to various markets across Tamil Nadu. For the assessment year 2018-19, they filed its return of income reporting the taxable income of Rs.72,19,470/- along with the claim of Rs.11,44,54,027/- representing the agricultural income derived from cultivation and sale of white button mushrooms, which was exempted from taxation under section 10(1) of the Income Tax Act. Upon scrutiny of the same, they were issued with a show cause notice dated 28.09.2019 under section 143(2) of the Act, pursuant to which, the appellant filed its response on 06.10.2019. Thereafter, they were served with a show cause notice-cum- draft assessment order dated 22.04.2021 proposing to determine the total taxable income at Rs.28,05,99,730/- by granting one day time to respond within 23.59 hours of 23.04.2021, to which, the appellant filed its reply on 23.04.2021. Subsequently, they were issued with a show cause notice-cum-modified draft assessment order dated 21.09.2021 calling upon them to respond by 23.59 hours of 22.09.2021, in and by which, the course of assessment was changed by restricting the turnover from sale of white button mushroom to Rs.1,87,77,400/- out of the turnover reported in the books of Rs.41,22,05,594/- and proposing to treat the balance amount of Rs.39,40,28,194/- as income under section 69A as unexplained money. The appellant filed its reply to the same on 22.09.2021. Ultimately, the first respondent passed the assessment order on 23.09.2021 adopting the modified draft assessment order along with demand notice quantifying the tax payable by the appellant at Rs.43,82,99,580/-. Challenging the same, on the ground of violation of principles of natural justice, the appellant filed WP.No.22071 of 2021, which by order dated 22.10.2021, was dismissed by the learned Judge, holding that there is an efficacious and alternative remedy of statutory appeal available to them under section 246A of the Income Tax Act. Aggrieved over



the said order passed in the writ petition, they have come up with this writ appeal before this court.

3. On 26.11.2021, when the matter was taken up for admission, this court directed the respondents to get instructions and file counter, if any, and in the mean while, the interest of the appellant was protected.

4. Subsequently, the respondents have filed their counter affidavit in CMP.No.19494 of 2021 in WA.No.2894 of 2021, wherein, it is inter alia stated that the present appeal is not maintainable, inasmuch as the appellant has already filed an appeal under section 246A of the Income Tax Act, 1961, against the assessment order dated 23.6.2021 relating to the assessment year 2018-19; and that, they can file a petition before the assessing officer in accordance with section 220(6) of the Act to treat them as an assessee not in default.

5. Whereas, on the side of the appellant, a memo was filed and a request was made to this court to direct the learned CIT (A) to consider the grounds raised in the statutory appeal preferred by the assessee under section 246A of the Income Tax Act, 1961, along with the grounds relating to sales pattern, impossibility of providing the name, address, PAN and other identity of retail walk-in customers, overall expenses incurred including TDS, EB payments, etc., toll plaza passes for vehicles for daily carrying of white button mushrooms and contradictory observations of the assessing officer. That apart, it is prayed on the side of the appellant that the department may be directed to consider and refer their case to the High pitched Assessment Committee, as the assessee's case would fall within the instructions stipulated in circular no.17/2015 dated 09/11/2015 in F.No.225/290/2015-IT-II issued by the Ministry of Finance, Government of India.

6. It is thus, evident from the submissions made by the parties that the appellant has already filed the statutory appeal in accordance with section 246A of the Act, which is an effective and efficacious alternative remedy available to them. In such circumstances, they cannot be permitted to pursue this appeal, as it is a settled law that simultaneously, the litigants could not avail of two parallel remedies in respect of the same matter at the same time [Refer: Jai Singh v. Union of India and others, 1977 AIR 898; Awadh Bihari Yadav and others v. State of Bihar and others, (1995) SCC (6) 31]. Though the learned senior counsel appearing for the appellant placing reliance on the decision of the Supreme Court in Magadh Sugar & Energy Ltd v. State of Bihar [2021 SCC Online SC 801] submitted that the existence of an alternate remedy does not by itself bar the High Court from exercising its jurisdiction in certain



contingencies, the same cannot be countenanced by this court, as the issues involved in that decision are purely on the legal principles, without reference to the factual scenario.

7. In such view of the matter, the writ appeal stands dismissed, leaving it open to the appellant to raise all the grounds raised before this court to the appellate authority and pursue the appeal pending before him along with stay application, if any. It is made clear that this court has not expressed any opinion on the merits of the case and it is for the appellate authority to decide the appeal on merits and as per law, after providing due opportunity of being heard to the appellant. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Deputy Registrar (CS)

//True Copy//

Sub Assistant Registrar

To

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+1cc to Mr.M.Velmurugan, Advocate, S.R.No.8433

W.A. No.2894 of 2021

NK(CO)
RGA(18/02/2022)