BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: **07.06.2022**
CORAM:
THE HONOURABLE **MR.JUSTICE M.NIRMAL KUMAR**
W.P.(MD)No.9237 of 2022
and
W.M.P.Nos.6598 and 6600 of 2022

Abdul Rahman Marakayar .. Petitioner

Vs

1.The Government of India,
Ministry of Finance,
Income Tax Department,
National Faceless Assessment Centre,
Delhi.

2.The Additional/Joint/Deputy/
Asssitant Commissioner of Income Tax,
Income Tax Officer,
National Faceless Assessment Centre,
Delhi. .. Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, to call for the records Assessment order DIN No.ITBA/AST/S/147/2021-22/1042111051 (1) dated 30.03.2022 on the file of the respondents herein and quash the same.

For Petitioner : Mr.J.Gunaseelanmuthiah
For Respondents : Mr.N.Dilip Kumar

ORDER

The present Writ Petition has been filed to quash the Assessment order in DIN No.ITBA/AST/S/147/2021-22/1042111051 (1) dated 30.03.2022 on the file of the respondents.

2.The petitioner is an assessee, who has challenged the assessment order passed by the second respondent in DIN No.ITBA/AST/S/147/2021-22/1042111051 (1), dated 30.03.2022.

3.The contention of the petitioner is that the assessment has been made for the year 2013-14 and he had wrongly submitted the assessment year as 2012-13. Since the assessment is bad in law, he prayed for setting aside the assessment order.

4.The learned counsel appearing for the respondents/Income Tax submitted that the assessment order is for the year 2013-14. Initially, a notice under Section 148 of the Income Tax Act, 1961, was issued on 31.03.2021. Thereafter, a notice under Section 142(1) of the Income Tax Act, 1961 was issued to the assessee on 08.02.2022, 20.02.2022 and 26.02.2022. The petitioner purchased the immovable property on 04.06.2012 and thereafter, the property sold on 06.09.2012. The petitioner had suppressed the income of Rs.1,19,17,620. The Assessment Officer, on considering the materials, found that the petitioner had purposely not responded to the notice and participated in the proceedings. Thereafter, the second respondent, following the best judgment assessment procedure, had passed the assessment order. If at all, the petitioner is aggrieved, he has to file an appeal.

5.In view of the same, this takes me to the alternate remedy plea. The alternate remedy rule no doubt is not an absolute rule. In other words, the alternate remedy rule is a rule of discretion. It is not only a rule of discretion, it is a self restraint *qua* writ jurisdiction. In the light of this obtaining legal position, Hon'ble Supreme Court in a long line of judgments ie., ***Dunlop India*** case ***[Assistant Collector of Central Excise, Chandan Nagar, West Bengal Vs. Dunlop India Ltd., and others*** reported in ***(1985) 1 SCC 260], Satyawati Tandon [United Bank of India Vs. Satyawati Tondon and others*** reported in ***(2010) 8 SCC 110]*** and ***K.C.Mathew [Authorized Officer, State Bank of Travancore and another Vs. Mathew K.C.*** reported in ***(2018) 3 SCC 85]*** has repeatedly held that when it comes to Revenue matters [ie., fiscal Statutes] alternate remedy rule has to be applied with utmost rigour. These three case laws mentioned here do not make a exhaustive list, they are only illustrative and what I have mentioned are oft quoted judgments for the proposition that alternate remedy rule has to be applied with utmost rigour in fiscal Statutes.

6.In other words, the campaign of the writ petitioner *qua* the impugned orders in the writ petition fail and the writ petition is dismissed albeit making it clear that if the writ petitioner chooses the alternate remedy route and files statutory appeals, the same will be considered (subject of course to limitation and pre-deposit condition) by the appellate authority on its own merits and in accordance with law. Consequently, the connected writ miscellaneous petitions are dismissed. There shall be no order as to costs.

Sd/-

Assistant Registrar (P&A)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

Vsg

To

1.The Government of India,
Ministry of Finance,
Income Tax Department,
National Faceless Assessment Centre,
Delhi.

2.The Additional/Joint/Deputy/
Asssitant Commissioner of Income Tax,
Income Tax Officer,
National Faceless Assessment Centre,
Delhi.

+1 CC to M/s.N.DILIPKUMAR, Advocate (SR-24675[F] dated 08/06/2022)

+1 CC to M/s.J.GUNASEELANMUTHAIAH, Advocate (SR-24703[F] dated 09/06/2022)

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