BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **23.08.2022**

CORAM

THE HONOURABLE MR.JUSTICE S.S.SUNDAR
AND
THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.A(MD)No.898 of 2022
and
C.M.P(MD)No.7495 of 2022

AM.Xavier ... Appellant/Writ Petitioner

Vs.

1.The Assistant Commissioner of Income Tax,
Circle – I, Karaikudi,
Sivagangai District.

2.Income Tax Officer,
Ward 1, Karaikudi,
Sivagangai. ...Respondents

PRAYER: Writ Appeal filed under Clause 15 of Letters Patent, against the order dated 29.03.2022 passed in W.P(MD)No.2826 of 2022.

For Appellant :Mr.T.Bashyam

For Respondents :Mr.N.Dilip Kumar,
Standing Counsel

JUDGMENT

(Judgment of the Court was delivered by S.S.SUNDAR, J.)

This writ appeal is directed against the order of the learned single Judge, dated 29.03.2022 passed in W.P(MD)No.2826 of 2022.

2. Heard Mr.T.Bashyam, learned counsel for the appellant and Mr.N.Dilip Kumar, learned Standing Counsel for respondents 1 and 2.

3. Challenging the impugned notices, dated 31.03.2021, 23.06.2021 and 29.11.2021, issued by the respondents for the assessment year 2014-2015, the appellant filed a writ petition in W.P(MD)No.2826 of 2022, mainly on the ground that reopening of assessment cannot be initiated for change of opinion and therefore, the impugned notices are liable to be quashed.

4. After considering the facts and the submissions of the learned counsel appearing for the appellant and the respondents, the learned single Judge disposed of the writ petition with the following

observations:

> *"11.In any event, no prejudice would be caused to the petitioner as the petitioner has now been issued with a draft order and a show cause notice. Considering the same, I am inclined to dispose of this writ petition by directing the petitioner to give a proper reply to the same. The petitioner may file such reply within a period of 30 days from the date of receipt of a copy of this order. On receipt of such reply within such time or at the expiry of such time, which the respondents may give, the the respondents shall proceed to pass appropriate orders on merits and in accordance with law, within a period of 3 months therefrom. It is open for the petitioner to ask for a personal hearing through video conference."*

5. It is now represented by the learned standing counsel for the respondents that final order has been passed on 04.07.2022.

6. The learned counsel appearing for the appellant submitted that the appellant is entitled to challenge the order of assessment in a writ

petition despite alternative remedy in view of the grounds raised with regard to the jurisdiction of the Assessing Officer and on the ground that reopening of assessment is not within time.

7. Since final order has been passed by the Assessing Officer, this Court is not inclined to interfere with the order passed by the learned single Judge. Accordingly, this writ appeal is dismissed. However, liberty is given to the appellant to challenge the order of Assessing Officer, dated 04.07.2022, may be by filing a writ petition raising all the grounds including the point of limitation. Since we have not considered the matter on merits, we de not express any opinion as to the maintainability of writ petition. No Costs. Consequently, connected miscellaneous petition is closed.

[S.S.S.R., J.] [S.S.Y., J.]
23.08.2022

Index:Yes/No
Internet:Yes
PM

S.S.SUNDAR, J.
AND
S.SRIMATHY, J.

PM

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