BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 10.10.2022

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THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P.(MD)No.22846 of 2022
and
W.M.P.(MD)Nos.16968 and 16969 of 2022

AM.Xavier ... Petitioner

Vs.

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

2. The Income Tax Officer,
   Ward-I, Karaikudi,
   Sivagangai. ... Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorari, calling for the records relating to impugned notice dated 31.03.2021 in ITBA/AST/S/148/2020-21/1032031421 (1) and 23.06.2021 in ITBA/AST/F/143(2)-4/2021-22/1033643281(1) and 29.11.2021 in ITBA/AST/F/17/2021-22/1037341340(1) and consequential assessment order dated 04.07.2022 in ITBA/AST/S/147/2022-23/1043726970 (1) issued by Respondents for Assessment Year 2014-15 under Sections 147 and 148 of Income Tax Act and quash the same.

For Petitioner	:	Mr.T.Bashyam
For Respondents	:	Mr.N.Dilip Kumar Standing Counsel

O R D E R

This Writ Petition is filed challenging the order of assessment dated 04.07.2022 for the assessment year 2014-15 on the premise that the assessment order invoking the extended period of limitation, is without jurisdiction. Secondly, the order of reassessment made under Section 147 of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') is a review of the order of assessment made under Section 143(3) of the Act, which is impermissible.

2. This is the second round of litigation. In the earlier round of litigation, the Petitioner, in W.P.(MD)No.2826 of 2022, had challenged the notice, wherein, after hearing the learned counsel for the Petitioner, this Court was pleased to dispose of the said Writ Petition with the following observations:

"10.The dispute pertains to the assessment year 2014-15 (relevant previous year 2013-14). Though the amount of Rs.32,47,512/- appears to have been shown as an asset of the firm in the Profit and Loss account of the firm (M/s.Antony Muthu Udayar and Company), there is no clear explanation as to whether the aforesaid amount was offered as an income by the petitioner. If the amount was transferred to the personal account/savings account of the petitioner at the Syndicate Bank, then the aforesaid amount should have been shown as an expense in the firm's account. The aforesaid adjustments are required to be reconciled and considered by the Officer.

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 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."

The same was challenged by way of a Writ Appeal in W.A.(MD)No.898 of 2022. However, before the Writ Appeal had been heard, the order of assessment came to be passed. Since final order has been passed by the Assessing Officer, the Writ Appeal was dismissed. The relevant portion is extracted hereunder:

> *"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 do not express any opinion as to the maintainability of writ petition. No costs. Consequently, connected miscellaneous petition is closed."*

3. The present Writ Petition is filed challenging the impugned order of assessment which is made during the pendency of the Writ Appeal. The order of assessment under Sections 147 and 148 of the Act is made primarily on the ground that the assessee had not disclosed the Savings Bank Account (Account No.62722200023290) maintained with Syndicate

Bank for taxation during the original assessment, which had a closing balance of Rs.32,47,512/- and the same was disclosed in the balance sheet as on 31.03.2014.

4. It is submitted by the learned counsel for the Petitioner that the assessee had submitted its objection, the Petitioner had however not explained the debit and credit entries in respect of his Saving Bank Account maintained with the Syndicate Bank. He further submitted that the Petitioner as a Managing Partner of M/s.Anthony Muthu Udayar and Company used to withdraw cash from OD account and deposit cash into his bank account. However, the same was rejected by the Assessing Officer on the premise that the assessee had suppressed the above account and not disclosed fully and truly all material facts necessary for assessment for the assessment year under consideration. The objection raised by the assessee was found to be untenable and the Respondents proceeded to treat the credit in the Petitioner's bank account as unexplained money in terms of Section 69A of the Act and reassessment was completed.

5. It was submitted by the learned Standing Counsel for the Respondents that the impugned order is appealable, thus the exercise of power under Article 226 of the Constitution of India is unwarranted in view of the existence of alternate remedy. Though the exercise of power under Section 147 of the Act on mere change of opinion, would render the proceedings without jurisdiction. However, the question whether the assessment order is mere change of opinion or the facts already placed before the Assessing Officer or these are new tangible materials, would require investigation into above facts.

6. In this regard, it may be useful to refer to the judgment of the Hon'ble Supreme Court in the case of ***Thansingh Nathmal v. Supt. of Taxes***, reported in ***AIR 1964 SC 1419*****,** wherein, the Constitution Bench of this Court made it amply clear that although the power of the High Court under Article 226 of the Constitution is very wide, the Court must exercise self-imposed restraint and not entertain the Writ Petition, if an alternative effective remedy is available to the aggrieved person. In para 7, the Court observed thus :

"7. Against the order of the Commissioner an order for reference could have been claimed if the appellants satisfied the Commissioner or the High Court that a question of law arose out of the order. But the procedure provided by the Act to invoke the jurisdiction of the High Court was bypassed, the appellants moved the High Court challenging the competence of the Provincial Legislature to extend the concept of sale, and invoked the extraordinary jurisdiction of the High Court under Article 226 and sought to reopen the decision of the taxing authorities on question of fact. The jurisdiction of the High Court under Article 226 of the Constitution is couched in wide terms and the exercise thereof is not subject to any restrictions except the territorial restrictions which are expressly provided in the Articles. But the exercise of the jurisdiction is discretionary : it is not exercised merely because it is lawful to do so. The very amplitude of the jurisdiction demands that it will ordinarily be exercised subject to certain self-imposed limitations. Resort to that jurisdiction is not intended as an alternative remedy for relief which may be obtained in a suit or other mode prescribed by statute. Ordinarily the Court will not entertain a petition for a writ under Article 226, where the petitioner has an alternative remedy, which without being unduly onerous, provides an equally efficacious remedy. Again the High Court does not generally enter upon a

determination of questions which demand an elaborate examination of evidence to establish the right to enforce which the writ is claimed. The High Court does not therefore act as a court of appeal against the decision of a court or tribunal, to correct errors of fact, and does not by assuming jurisdiction under Article 226 trench upon an alternative remedy provided by statute for obtaining relief. Where it is open to the aggrieved petitioner to move another tribunal, or even itself in another jurisdiction for obtaining redress in the manner provided by a statute, the High Court normally will not permit by entertaining a petition under Article 226 of the Constitution the machinery created under the statute to be bypassed, and will leave the party applying to it to seek resort to the machinery so set up."

7. Even though the High Court can entertain a Writ Petition against any order or direction passed / action taken by the State under Article 226 of the Constitution, it ought not to do so as a matter of course when the aggrieved person could have availed of an effective alternative remedy in the manner prescribed by law.[1] Therefore, the present Writ Petition is liable to be dismissed and the Petitioner may challenge the same

1 *Baburam Prakash Chandra Maheshwari* v. *Antarim Zila Parishad* [*Baburam Prakash Chandra Maheshwari* v. *Antarim Zila Parishad*, AIR 1969 SC 556] and also *Nivedita Sharma* v. *COAI* [*Nivedita Sharma* v. *COAI*, (2011) 14 SCC 337 : (2012) 4 SCC (Civ) 947]

by way of a statutory appeal. If so advised the Petitioner may file an appeal, the time spent in pursuing the Writ Petition under the bonafide belief that the Petitioner can successfully question the impugned order by way of Writ Petition would be excluded for the purpose of reckoning the limitation if appeal is filed.

8. This Court is of the view that this is a case where there are disputed questions of facts and it may not be appropriate to interfere under Article 226 of the Constitution of India. All the questions are left open to the Petitioner to agitate the issue before the appropriate authority.

9. Accordingly, this Writ Petition is dismissed. No costs. Consequently, connected Miscellaneous Petitions are closed.

10.10.2022

Index : Yes / No
Speaking Order : Yes / No

vji

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MOHAMMED SHAFFIQ, J.

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