BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED :19.10.2022

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THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P.(MD).No.24011 of 2022
and
W.M.P(MD).Nos.18105, 18106, 18108 & 18110

M/s Prabhu Farms Private Limited,
Rep.,by its Managing Director,
No.75/92, Mudaliappa Puram Street,
Kallidaikuruchi PO,
Tirunelveli ... Petitioner

Vs.

1.The Assessment Unit
Income Tax Department,
National e-Assessment Centre, Delhi
E-Ramp, Jawaharlal Nehru Stadium,
Delhi-110 003.
2.The Principal Commissioner of Income Tax-1,
Madurai,
Income Tax Department,
Madurai, Tamilnadu 625 002. ... Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorari, to call for the records of the Writ Petitioner Company on the file of the 1st Respondent to quash the impugned order dated 22.09.2022 passed under Section 143(3) read with Section 144B of the Act of the Assessment Year 2020-21 in DIN:ITBA/AST/S/143(3)/2022-23/1045845150(1).

For Petitioner :Mr.A.S.Sriraman
For Respondents :Mr.N.Dilip Kumar
Standing Counsel

O R D E R

The present writ petition is filed challenging the impugned order dated 22.09.2022 under Section 143(3) r/w Section 144B of the Income Tax Act for the Assessment year 2020-2021 in DIN:ITBA/AST/S/143(3)/2022-23/1045845150(1) and also restrain the first respondent from continuing with the penalty proceedings initiated under Section 271AAC(1) r/w Section 274 of the Act vide show cause notice dated 22.09.2022.

2. The impugned order dated 22.09.2022 is challenged by the petitioner primarily on the premise that the assessment made under the scheme for the assessment year 2020-21 suffers from gross violation of the principles of natural justice inasmuch as the petitioner has not been provided with adequate opportunity.

3. The petitioner filed his return of income for the assessment year 2020-21 on 31.12.2020 reporting the total taxable income at Rs.9,42,470/-. Thereafter, the return of income was processed under Section 143(1) of the Act on 11.07.2021 and notice under Section 143(2) of the Act dated 29.06.2021 was issued. Further, another notice dated 02.11.2021 under Section 142(1) of the Act was issued calling for details as set out in the annexure to the above notice. The petitioner submitted his response to the said notice vide communication dated 17.11.2021 along with all records as called for. Thereafter, a series of notices were issued under Section 142(1) dated 16.12.2021, 24.12.2021, 12.01.2022, 03.02.2022, 10.02.2022 and finally on 19.03.2022 seeking response on or before 26.03.2022. The petitioner received further reminder notice dated 18.08.2022 stating that earlier notices were not responded. The petitioner submitted e-proceeding response to the said notice on 24.08.2022 through IDBI portal. However, the assessment order dated 22.09.2022 has been passed confirming taxable income as per earlier proposal while levying penalty for under reporting under Section 271AAC of the Act.

4. It is submitted by the learned counsel for the petitioner that the Income Tax Department has not considered the request made for producing the relevant documents further the Chartered Accountant who was handling the tax issues passed away and thus renders the order arbitrary and unreasonable inasmuch as personal hearing was also not granted. The assessment order came to be passed on the basis that the assessee has failed to prove the declared agricultural income, which is exempt in terms of Section 10(1) of the Act. In the absense of relevant documentary evidence in support of the above exemption, the assessment orders has been issued treating the amount disclosed as agricultural income as income from other sources. While, in respect of a sum of Rs.44,95,880/- the assessment orders were made on the basis that the assessee has failed to justify and substantiate with relevant materials and documentary evidences to prove the declared income from basic agricultural operations.

5. Mr.N.Dilip Kumar, learned Standing Counsel, takes notice for the respondents. He submits that insofar as the impugned order under Section 143(3) r/w Section 144B of the Act, dated 22.09.2022, being an

order of assessment, there is an effective alternate remedy and it is not a case where the petitioner is not put on notice. The petitioner was put on notice and it is only in view of the failure on the part of the petitioner to prove the income from agricultural operations and identity and creditworthiness of the creditors for unsecured loan, it is submitted that the impugned order has been passed. It is the submission of the learned Standing Counsel that the impugned order is passed after providing a reasonable opportunity to the petitioner.

6. This Court is of the view that the impugned order being an order of assessment, there is statutory remedy and thus there is no reason to bypass the statutory remedy to entertain the petition under Article 226 of the Constitution of India. Unless the order is shown to have been made in gross violation of principles of natural justice or is made without jurisdiction. In this regard, it may be relevant to refer to the following judgment of the 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."

(emphasis supplied)

There can be no doubt that 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]

7. In view of the same, the writ petition is dismissed, however, liberty is granted to the petitioner to file a statutory appeal within a period of three weeks from the date of receipt of a copy of this order. If such appeal is filed, the same shall be entertained and disposed of by the Appellate Authority as expeditiously as possible. No costs. Consequently, connected miscellaneous petitions are closed.

19.10.2022

Index : Yes / No
Speaking Order : Yes / No
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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]

To

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E-Ramp, Jawaharlal Nehru Stadium,
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MOHAMMED SHAFFIQ, J.

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