18.10.2023
Item No.14
gd/ssd

MAT/1504/2023
IA NO: CAN/1/2023
ASIM SANKAR MAL
VS
UNION OF INDIA AND ORS.

Mr. Debasish Ghosh,
Mr. Subhajit Roy
..for the Appellant.

Mr. Om Narayan Rai
..for the Respondents.

1. This intra court appeal by the writ petitioner is directed against the order passed on 12th July, 2023 in WPA 14545 of 2023.

2. In the said writ petition the appellant had challenged the assessment order passed under Section 147 read with Section 144(C)(3) of the Income Tax Act, 1961 dated 23.05.2023 on the ground that the appellant committed a mistake in not uploading his objections to the draft assessment order before the Dispute Resolution Panel (in short, "DRP") but had uploaded it in the portal with a copy marked to the assessing officer.

3. Since the appellant did not file the objections to the draft assessment order before the DRP within the time stipulated, the assessing officer had no option except to proceed to complete the assessment under Section 147 read with Section 144(C)(3) of the Act. Admittedly, as against the assessment order the appellant has an effective alternative remedy by way of

an appeal before the Commissioner of Income Tax Act, we find that no exceptional service has been made out in this case for the appellant to bypass the statutory appellate remedy.

4. Therefore, the view taken by the learned Single Bench does not call for any interference.

5. The appellant is directed to file the appeal before the Commissioner of Income Tax (Appeal) on or before 30th November, 2023 from the date of receipt of the server copy of this order. If the appeal is filed, the appeal shall be entertained without reference to limitation subject to payment of pre-deposit and decide the same on merits and in accordance with law. Till the appeal is heard and disposed of, the penalty proceedings which have been initiated under Section 271(1) shall be kept in abeyance.

6. Though in the assessment order the assessing officer has referred to Section 144(C)(3) of the Act, in effect the order is an order passed under Section 147 read with Section 144(C)(3) of the Act.

7. In this regard, it is relevant to take note of the decision of the High Court of Madras in the case of *Inno Estates Pvt. Ltd. V. Dispute Resolution Panel-2 and Another* reported at *2018 SCC Online Mad 13728* wherein it was held as follows:

> "26. As found by the Dispute Resolution Panel, an objection is to be filed by the aggrieved assessee within thirty days from the date of

receipt of the draft assessment order. Dispute Resolution Panel has no power and/or authority and/or jurisdiction to condone the delay in filing the objection.

27. When an objection is filed before the Dispute Resolution Panel beyond the stipulated time of thirty days from the date of receipt of the order, there is no objection before the Dispute Resolution Panel in the eye of law.

28. An order of rejection of an objection on the ground of the same being barred by limitation is not a direction under sub-section (5) read with subsection (6) of section 144C of the 1961 Act. Though the impugned order dated November 10, 2016 rejecting the objection on the ground of the bar of limitation is captioned as a direction under section 144C(5) of the 1961 Act, it is not in fact a direction under section 144C(5). The quoting of a wrong provision in an order is a mistake apparent on the face of the record and, therefore, inconsequential. The impugned assessment order though stated as an order under section 143(3) read with section 144C(13) of the 1961 Act, is not an order in pursuance of the directions of the Dispute Resolution Panel, but an order of assessment simpliciter under section 143(3) of the 1961 Act from which an appeal would lie to the Commissioner (Appeals). The learned Single judge rightly dismissed the writ petition and remitted the appellant to his remedy of appeal before the first appellate authority. However, the time granted to the appellant by the learned Single judge Bench to file an appeal before the first appellate authority as against the impugned order passed by the second respondent is extended for a further period of four weeks from date. Needless to mention that it will be open to the appellant-assessee to agitate all questions before the first appellate authority."

8. With the above observations, the appeal stands dismissed.

(T. S. SIVAGNANAM)
CHIEF JUSTICE

(HIRANMAY BHATTACHARYYA, J.)