IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 08.12.2023

CORAM

THE HONOURABLE Mr.JUSTICE R.MAHADEVAN
AND
THE HONOURABLE Mr.JUSTICE MOHAMMED SHAFFIQ

W.A.Nos.3388 & 3393 of 2023
and
C.M.P.Nos.27698, 27736 & 27737 of 2023

M/s.Kadhambari Construction,
represented by its partner J.Atralarasan,
No.3, North Street, Viswanathapuram,
Koradacherry, Thiruvarur District. .. Appellant in both cases

Vs.

The Commercial Tax Officer,
Nannilam, Thiruvarur District. .. Respondent in both cases

Common Prayer: Writ Appeals filed under Clause 15 of the Letters Patent against the common order dated 09.03.2022 passed in W.P.Nos.5200 & 5205 of 2022, respectively, on the file of this Court.

For Appellant
in both cases : Mr.S.Sivakumar
For Respondent
in both cases : Mr.V.Prashanth Kiran
Government Advocate

COMMON JUDGMENT

[Judgement of the Court was delivered by R.MAHADEVAN, J.]

These writ appeals have been filed, by the appellant / writ petitioner / assessee, challenging the common order dated 09.03.2022 passed by the learned Judge in W.P.Nos.5200 & 5205 of 2022, respectively.

2.In the order impugned herein, the learned Judge has dismissed the aforesaid writ petitions filed to set aside the orders dated 19.11.2021 passed by the respondent, for the assessment year 2014-15, by observing as follows:

> *"5.It has been repeatedly held by this Court that without exhausting the appellate remedy, which is statutorily available and is an efficacious alternative remedy, when these kind of cases come up invoking the extraordinary jurisdiction under Article 226 of the Constitution of India, that can be entertained only under three circumstances:*
>
> *i. Violation of principles of natural justice*
> *ii. Violation of statutory provisions, and*
> *iii. For want of jurisdiction*

6.In the absence of any of the above three circumstances, no writ petition would be entertained under Article 226 of the Constitution of India. This is one such case which does not fall in any of the aforesaid category. Therefore, the petitioner has to only approach the appellate authority assailing the impugned orders.

7.Hence, these writ petitions are liable to be dismissed. Accordingly, the same are dismissed..."

3. Today, when the matters were taken up for consideration, the learned counsel appearing for both sides submitted that the very same order impugned herein passed in another WP.No.5197 of 2022, relating to the assessment year 2012-13 has been challenged by the appellant herein by filing WA.No.2522 of 2022 and a Co-ordinate Bench of this Court has disposed of the said writ appeal, by judgment dated 21.11.2022, in the following terms:

"5. Considering the fact that the limitation for filing a statutory appeal as against the order of assessment impugned in the writ petition would have expired long before, we are inclined to give liberty to the appellant/writ petitioner to prefer an appeal within a period of 30 days from the date of receipt of a copy of this order subject to other compliances of provisions of the Act. In case, such an appeal is filed within such time, the First Appellate Authority shall consider and dispose of the appeal on merits and in accordance with law without reference to limitation. The appellant is at liberty to raise all defences that are available in law in the appeal."

Therefore, the learned counsel prayed for similar order in these writ appeals as well.

4. Following the aforesaid judgment, both the writ appeals stand disposed of, in the same lines. Accordingly, liberty is granted to the appellant to prefer appeal within a period of 30 days from the date of receipt of a copy of this judgment, subject to other compliances of provisions of the Act. On filing of such appeal within the time stipulated, the Appellate Authority shall consider and dispose of the same, on merits and in accordance with law, without reference to the limitation aspect. Needless to state that the appellant is at liberty to raise all the defence that are available, before the appellate authority.

5. With the aforesaid observations and directions, both the writ appeals stand disposed of. No costs. Connected C.M.Ps. are closed.

[R.M.D.,J.] [M.S.Q., J.]
08.12.2023

Index: Yes / No
Speaking order/ Non-speaking order
Neutral Citation: Yes / No
nsd

To

The Commercial Tax Officer,
Nannilam, Thiruvarur District.

R.MAHADEVAN, J.
AND
MOHAMMED SHAFFIQ, J.

nsd

W.A.Nos.3388 & 3393 of 2023

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