IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.10.2023

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The Honourable **Mr.Justice Krishnan Ramasamy**

W.P.No.6394 of 2023
and
W.M.P.No.6427 and 6428 of 2023

Palanisamy Jeevanantham ...Petitioner

S/o. Palanisamy

Vs.

1. The Principal Commissioner of Income Tax -1,
 REAC, Coimbatore – 641 018.

2. The Income Tax Officer,
 Assessment Unit, National Faceless Assessment Centre,
 Income Tax Department,
 Ministry of Finance,
 Room No.401, 2nd Floor, E.-Ramp,
 Jawarharlal Nehru Stadium,
 Delhi – 110 003.

3. The Income Tax Officer,
 Ward 1 (6)
 No.3, Gandhi Road, Salem – 636 007.

4. The Commissioner of Income Tax (Appeals)
National Faceless Assessment Centre,
Income Tax Department,
Ministry of Finance, Delhi – 110 003. ...Respondent

Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari to call for records in DIN : ITBA/REV/F/REV7/2022-23/1049013517(1) dated 23.01.2023 on the file of the first respondent relating to AY 2013-14 and to quash the same.

For Petitioner : Mr.M.P.Senthil Kumar

For Respondents : Mr.R.S.Balaji,
Senior Standing Counsel
asst. by Mr.S.Premalatha
Junior Standing Counsel

ORDER

The petitioner has filed this Writ Petition seeking for issuance of a writ, in the nature of certiorari to quash the order passed by the first respondent dated 23.01.2023.

2. Mr.M.P.Senthil Kumar, the learned counsel appearing for the petitioner would submit that the first respondent is the Revisional Authority and against the assessment order passed by the Assessing Officer under Section 147 read with section 144 B dated 29.03.2022, the petitioner filed a Revision before the first respondent/Revisional Authority, however, before filing such Revision, the petitioner filed an Appeal before the Commissioner of Income Tax (Appeals)/fourth respondent; that subsequent to the filing of the Revision Application, the petitioner received a notice of hearing from the first respondent on 09.12.2022, in these circumstances, the petitioner approached the fourth respondent/Commissioner of Income Tax (Appeals) with a request to withdraw the Appeal; that the fourth respondent also accepted the request of the petitioner and permitted the petitioner to withdraw the Appeal and accordingly, dismissed the Appeal by order dated 21.12.2022; that however, in a Revision Application, though the first respondent accepted almost all the submission made by the petitioner, declined to interfere with the assessment order of FAO and passed the impugned order under Section 264 of the Act dated 23.01.2023 by observing that the recourse available to the petitioner is to file an Appeal.

Under these circumstances, the learned counsel for the petitioner seeks for appropriate direction.

3. The learned Senior Standing Counsel for the respondent-Department would submit since the said Appeal filed by the petitioner before the fourth respondent was not adjudicated and the same was withdrawn owing to filing of Revision before the first respondent, and now, by virtue of the impugned order passed by the first respondent/Revisional Authority, petitioner has been asked to workout their remedy before the Appellate Commissioner, fourth respondent, as was done by the petitioner at the first instance, he has no objection for appropriate directions being issued.

4. Heard the learned counsel appearing for the petitioner and the learned Senior Standing Counsel for the respondent-Department.

5. Aggrieved against the assessment order passed under Section 147 read with section 144 B dated 29.03.2022, the petitioner filed a Revision before the first respondent/Revisional Authority, however, before filing such Revision Application, the petitioner also filed an Appeal before the Commissioner of Income Tax (Appeals)/fourth respondent, but, subsequent to the filing of the Revision Application, since the petitioner received a notice of hearing from the first respondent/Revisional Authority dated 09.12.2022, the petitioner approached the fourth respondent/Commissioner of Income Tax (Appeals) to withdraw the Appeal stating the aforesaid reason, and the fourth respondent also accepted the request of the petitioner and dismissed the Appeal vide order dated 21.12.2022 and also recorded the reasons for such withdrawal. However, since unexpectedly, the first respondent/Revisional Authority though accepted all the submissions made by the petitioner, but, ultimately, declined to interfere with the assessment order of FAO by means of the impugned order, the petitioner is before this Court seeking leave of this Court to pursue the Appeal. In this context, it is apposite to refer to the relevant para of the impugned order passed by the first respondent dated 23.01.2023, which is as follows:-

> " I have carefully considered the materials available on record (viz.), the petition u/s 264 of the Act, the factual report of the AO as well as the Range

Head and also the impugned assessment orders. Perusal of the assessment order reveals that the department was in possession of information pointing towards Income escaping assessment and the relevant statutory notices were issued and served on the assessee. The assessee had also made compliances to the said notices by filing the requisite details. The Faceless Assessing Officer, has followed the due procedure of law and has concluded the assessment based on the material available on hand. Principles of natural justice has been duly followed and afforded to the assessee. All the objections made by the assessee has been rebutted in the assessment order and the FAO has given a finding of fact. If at all the assessee is aggrieved by the action of the FAO, the recourse available is to file an appeal against the order of the FAO. Having perused the facts of the case, the chronology of sequences in the assessment order, and the conclusion made by the FAO, I decline to interfere in the orders passed supra for the assessment year 2013-14, and therefore the petition is disposed of as above."

5.1 Thus, in the light of the aforesaid circumstances, unless and until, the fourth respondent/Appellate Authority is directed to take back the

Appeal filed by the petitioner on file, not only the interest of the petitioner would get affected but also that of the revenue's. Hence, this Court is inclined to pass orders to revive the Appeal filed by the petitioner before the fourth respondent/Commissioner of Income Tax (Appeals) bearing Appeal No., NFAC/2012-13/10134700.

5.2 Accordingly, the Appeal bearing Appeal No. NFAC/2012-13/10134700 stands revived. Consequently, the fourth respondent/Commissioner of Income Tax (Appeals) is directed to take up the Appeal on file and dispose of the same as per the provisions of the law.

6. With the above direction, this Writ Petition is disposed of. No costs. Consequently, connected Miscellaneous Petitions are closed.

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Index : yes/no
Neutral Citation : yes/no

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Krishnan Ramasamy,J.,

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