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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.07.2023

CORAM :

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.Nos.22293, 22299 and 22302 of 2023
and
W.M.P.Nos.21681, 21682, 21687, 21689, 21690 and 21691 of 2023

Rajasingh Thangadurai ... Petitioner in all W.Ps

Vs.

1.Assessment Unit,
Income Tax Department,
New Delhi.

2.National Faceless Assessment Centre,
Represented by its Principal Chief Commissioner of Income Tax,
Ministry of Finance, Income Tax Department,
2nd Floor, Jawaharlal Nehru Stadium,
New Delhi - 110 003.

3.The Deputy Commissioner of Income Tax,
Corporate Circle - 2(1),
R.No.511, Wanaparthy Block,
121, Mahatma Gandhi Road,
Nungambakkam, Chennai - 600 034. ... Respondents in all W.Ps

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Prayer in W.P.No.22293 of 2023: Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorarified Mandamus, to call for the records of the petitioner on the file of the first respondent and quash the impugned Assessment Order issued under Section 143(3) read with Section 144B of the Income Tax Act, 1961 bearing DIN ITBA/AST/S/143(3)/2022-23/1048135975(1) dated 21.12.2022 in PAN No.AHDPR8652H for the Assessment Year 2021-22 passed by the first respondent and consequently direct the first respondent to not to take any coercive action against the petitioner.

Prayr in W.P.No.22299 of 2023: Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorarified Mandamus, to call for the records of the petitioner on the file of the first respondent and quash the impugned Order issued under Section 271AAD(1)(i) of the Income Tax Act, 1961 bearing DIN ITBA/PNL/F/271AAD(1)(i)/2023-24/1053995564(1) dated 27.06.2023 in PAN No.AHDPR8652H for the Assessment Year 2021-22 passed by the second respondent and consequently direct the second respondent to not to take any coercive action against the petitioner.

Prayer in W.P.No.22302 of 2023: Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorarified Mandamus, to call for the records of the petitioner on the file of the first respondent and quash the impugned Order issued under Section 270A of the Income Tax

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Act, 1961 bearing DIN ITBA/PNL/F/270A/2023-24/1054038515(1) dated 29.06.2023 in PAN No.AHDPR8652H for the Assessment Year 2021-22 passed by the second respondent and consequently direct the second respondent to not to take any coercive action against the petitioner.

For Petitioner (In all W.Ps)	:	Mr.R.Prabhakaran
For Respondents (In all W.Ps)	:	Mr.Prabhu Mukunth Arun Kumar Standing Counsel

COMMON ORDER

Mr.Prabhu Mukunth Arun Kumar, learned Standing Counsel takes notice on behalf of the respondents.

2. By this common order, all the three writ petitions are being disposed of.

3. In W.P.No.22293 of 2023, the petitioner has challenged the impugned Assessment Order dated 21.12.2022 passed under Section 143(3) read with Section 144B of the Income Tax Act, 1961.

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4. In the other two writ petitions i.e., W.P.No.22293 of 2023 and W.P.No.22302 of 2023, the petitioner has challenged the impugned orders dated 27.06.2023 and 29.06.2023 imposing penalty under Section 270A and Section 271AAD(1)(i) of the Income Tax Act, 1961.

5. Challenge to the impugned Assessment Order dated 21.12.2022 passed under Section 143(3) read with Section 144B of the Income Tax Act, 1961 in W.P.No.22293 of 2023 cannot be countenanced in the light of the recent decision of the Hon'ble Supreme Court in **Assistant Commissioner (CT) LTU, Kakinada and others** Vs. **Glaxo Smith Kline Consumer Health Care Limited**, (2020) 19 SCC 681 2020 SCC Online SC 440.

6. Though the impugned order is dated 21.12.2022, the W.P.No.22293 of 2023 was filed only on 25.07.2023. As per the decision of the Hon'ble Supreme Court in **Glaxo Smith Kline Consumer Health Care Limited** case (referred to supra), a writ petition beyond the statutory period of limitation is

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liable to be dismissed.

7. The Hon'ble Supreme Court held that the High Courts cannot entertain writ petitions where orders are challenged beyond the statutory period of limitation for filing appeal before the Appellate Authority.

8. Relevant portion from the said decision reads as under:-

> ***"14. In the backdrop of these facts, the central question is: whether the High Court ought to have entertained the writ petition filed by the respondent? As regards the power of the High Court to issue directions, orders or writs in exercise of its jurisdiction under Article 226 of the Constitution of India, the same is no more res integra. 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 (see Baburam Prakash Chandra Maheshwari vs. Antarim Zila Parishad [Baburam Prakash Chandra Maheswari v. Antarim Zila Parishad, AIR 1969 SC 556] and also Nivedita Sharma v. COAI, (2011) 14 SCC 337 : (2012) 4 SCC (Civ) 947]). In Thansingh Nathmal v. Supt. of Taxes, AIR 1964 SC 1419], 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 paragraph 7, the Court observed thus:-***

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(Thansingh Nathmal case [Thansingh Nathmal v. Supt. of Taxes, AIR 1964 SC 1419], AIR p. 1423)

> ***"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 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***

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> ***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."***

18. A priori, we have no hesitation in taking the view that what this Court cannot do in exercise of its plenary powers under Article 142 of the Constitution, it is unfathomable as to how the High Court can take a different approach in the matter in 18 (2016) 1 SCC 315 reference to Article 226 of the Constitution. The principle underlying the rejection of such argument by this Court would apply on all fours to the exercise of power by the High Court under Article 226 of the Constitution.

19. We may now revert to the Full Bench decision of the Andhra Pradesh High Court in Electronics Corpn. of India Ltd. [Electronics Corpn. of India Ltd. v. Union of India, 2018 SCC Online Hyd 21 : (2018) 361 ELT 22], which had adopted the view taken by the Full Bench of the Gujarat High Court in Panoli Intermediate (India) (P) Ltd. v. Union of India [Panoli Intermediate (India) (P) Ltd. v. Union of India, 2015 SCC Online Guj 570 : AIR 2015 Guj 97] and also of the Karnataka High Court in Phoenix Plasts Co. v. CCE [Phoenix Plasts Co. v. CCE, 2013 SCC Online Kar 10432 : (2013) 298 ELT 481]. The logic applied in these decisions proceeds on fallacious premise. For, these decisions are premised on the logic that provision such as Section 31 of the 2005 Act, cannot curtail the jurisdiction of the High Court under Articles 226 and 227 of the Constitution. This approach is faulty. It is not a matter of taking away the jurisdiction of the High Court. In a given

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case, the assessee may approach the High Court before the statutory period of appeal expires to challenge the assessment order by way of writ petition on the ground that the same is without jurisdiction or passed in excess of jurisdiction - by overstepping or crossing the limits of jurisdiction including in flagrant disregard of law and rules of procedure or in violation of principles of natural justice, where no procedure is specified. The High Court may accede to such a challenge and can also non-suit the petitioner on the ground that alternative efficacious remedy is available and that be invoked by the writ petitioner. However, if the writ petitioner choses to approach the High Court after expiry of the maximum limitation period of 60 days prescribed under Section 31 of the 2005 Act, the High Court cannot disregard the statutory period for redressal of the grievance and entertain the writ petition of such a party as a matter of course. Doing so would be in the teeth of the principle underlying the dictum of a three-Judge Bench of this Court in ONGC [ONGC v. Gujarat Energy Transmission Corpn. Ltd., (2017) 5 SCC 42 : (2017) 3 SCC (Civ) 47]. In other words, the fact that the High Court has wide powers, does not mean that it would issue a writ which may be inconsistent with the legislative intent regarding the dispensation explicitly prescribed under Section 31 of the 2005 Act. That would render the legislative scheme and intention behind the stated provision otiose."

9. Therefore, the impugned Assessment Order dated 21.12.2022 passed under Section 143(3) read with Section 144B of the Income Tax Act, 1961 is liable to be quashed and W.P.No.22293 of 2023 be dismissed.

10. As far as rest of the impugned Assessment Orders dated

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27.06.2023 and 29.06.2023 imposing penalty under Section 270A and Section 271AAD(1)(i) of the Income Tax Act, 1961 in W.P.Nos.22299 and 22302 of 2023 are concerned, the petitioner has an alternate remedy by way of an appeal before the Appellate Authority.

11. None of the following four exceptions recognized by the Hon'ble Apex Court for entreating writ petitions under Article 226 of the Constitution of India are discernible in the facts of the present cases:-

i. *In case of a petition filed for seeking relief against the infringement of fundamental rights, or*

ii. *In case of a petition filed for seeking relief against the violation of the principle of natural justice, or*

iii. *In case of a petition filed for seeking relief against the orders or proceedings that are made wholly without jurisdiction, or*

iv. *In case of a petition filed for seeking relief by challenging the limits/jurisdiction of a particular act.*

12. The impugned orders that have been passed by the Assessing Officer imposing penalty under the respective provisions of the Income Tax Act, 1961 are neither without jurisdiction nor passed in violation of principles of natural justice.

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13. It also cannot be said that the impugned orders suffer from any material irregularity warranting interference under Article 226 of the Constitution of India.

14. Since the petitioner has challenged these orders within the period of limitation before the expiry of the time to file statutory appeal before the Appellate Authority, the petitioner is given liberty to approach the Appellate Authority against the impugned orders in W.P.Nos.22299 and 22302 of 2023.

15. Therefore, W.P.Nos.22299 and 22302 of 2023 challenging the impugned orders dated 27.06.2023 and 29.06.2023 imposing penalty under Section 270A and Section 271AAD(1)(i) of the Income Tax Act, 1961 are liable to be dismissed with liberty to the petitioner to workout the remedy before the Appellate Authority under the provisions of the Income Tax Act, 1961.

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16. In the result,

i. W.P.No.22293 of 2023 is dismissed;

ii. W.P.Nos.22299 and 22302 of 2023 are dismissed with liberty to file statutory appeal before the Appellate Authority within a period of thirty days from the date of receipt of a copy of this order.

iii. No costs. The connected Writ Miscellaneous Petitions are closed.

27.07.2023

Index : Yes/No
Internet : Yes/No
Speaking Order/Non-Speaking Order
Neutral Citation : Yes/No

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Note:

Registry is directed to return the originals of the impugned orders dated 27.06.2023 & 29.06.2023 to the counsel for the petitioner to facilitate the petitioner to file statutory appeal.

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To

1.Assessment Unit,
Income Tax Department,
New Delhi.

2.National Faceless Assessment Centre,
Represented by its Principal Chief Commissioner of
Income Tax,
Ministry of Finance, Income Tax Department,
2nd Floor, Jawaharlal Nehru Stadium,
New Delhi - 110 003.

3.The Deputy Commissioner of Income Tax,
Corporate Circle - 2(1),
R.No.511, Wanaparthy Block,
121, Mahatma Gandhi Road,
Nungambakkam, Chennai - 600 034.

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W.P.Nos.22293, 22299 and 22302 of 2023
and
W.M.P.Nos.21681, 21682, 21687, 21689, 21690 and 21691 of 2023

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W.P.Nos.22293, 22299 & 22302 of 2023
and
W.M.P.Nos.21681, 21682, 21687 & 21689 to 21691 of 2023

C.SARAVANAN, J.

Today, this case is listed under the caption "for being mentioned' after these Writ Petitions were disposed of 27.07.2023.

2.There is a typographical error in paragraph No.9 of the common order of this Court dated 27.07.2023. In paragraph No.9 between "Section 144B of the Income Tax Act, 1961" and "is liable to be quashed", the word "**not**" has to be included. Similarly, in the same paragraph, after W.P.No.22293 of 2023, phrase "**is liable to**" has to be added.

3.Thus, paragraph No.9 of the common order of this Court dated 27.07.2023 reads as follows:-

> "9.Therefore, the impugned Assessment Order dated 21.12.2022 passed under Section 143(3) read with

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Section 144B of the Income Tax Act, 1961 is **not** liable to be quashed and W.P.No.22293 of 2023 **is liable to** be dismissed."

4.Registry is directed to incorporate the above correction in the common order dated 27.07.2023 and issue fresh order copy to the parties.

6.The other portions of the common order dated 27.07.2023 in W.P.Nos.22293, 22299 & 22302 of 2023 shall stands confirmed.

10.11.2023

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C.SARAVANAN, J.

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W.P.Nos.22293, 22299 & 22302 of 2023

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10.11.2023