IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 08.02.2023

CORAM

THE HONOURABLE MR. JUSTICE R. MAHADEVAN
AND

THE HONOURABLE MR. JUSTICE MOHAMMED SHAFFIQ

W.A. Nos.114, 115, 123, 124 and 126 of 2023

Tamizhavel P.T.Rajan
Commemoration Trust,
Represented by its Trustee,
Mr.N.Ramesh Rajan. .. Appellant in all Writ Appeals

Vs.

The Income Tax Officer
(Exemptions), Ward-1,
Aayakar Bhawan - Annexe Building,
No.121, Mahatma Gandhi Road,
Nungambakkam, Chennai-600 034. .. Respondent in all Writ Appeals

PRAYER in W.A. No.114 of 2023 : Writ Appeal filed under Clause 15 of Letters Patent praying to set aside the order dated 26.07.2022 in W.P.No.571 of 2020.

PRAYER in W.A. No.115 of 2023: Writ Appeal filed under Clause 15 of Letters Patent praying to set aside the order dated 26.07.2022 in W.P.No.574 of 2020.

PRAYER in W.A. No.123 of 2023: Writ Appeal filed under Clause 15 of Letters Patent praying to set aside the order dated 26.07.2022 in W.P.No.9214 of 2020.

PRAYER in W.A. No.124 of 2023: Writ Appeal filed under Clause 15 of Letters Patent praying to set aside the order dated 26.07.2022 in W.P.No.570 of 2020.

PRAYER in W.A. No.126 of 2023: Writ Appeal filed under Clause 15 of Letters Patent praying to set aside the order dated 26.07.2022 in W.P.No.9213 of 2020.

For Appellant : Mr.R.V.Eswar

in W.A.Nos.114, 115, 123, 124 of 2023		Senior Advocate for Mr.Dwarakesh Prabhakaran
For Appellant in W.A.No.126 of 2023	:	Mr.P.H.Arvind Pandian Senior Advocate for Mr.Dwarakesh Prabhakaran
For Respondent in all W.As.	:	Mr.V.Mahalingam Senior Standing Counsel

COMMON JUDGMENT

MOHAMMED SHAFFIQ, J.

In these batch of five writ appeals, the order of the learned Single Judge dated 26.07.2022 is under challenge. It was made clear by Mr.R.V.Eswar, learned Senior Advocate appearing for the appellant that the challenge in these appeals are confined to the observations on the merits of the appellant/ petitioner's claim made by the learned Single Judge while acceding to the request of the learned counsel for the appellant/ petitioner to withdraw the writ petitions with liberty to file statutory appeals.

2. Before the learned Single Judge, the appellant/ petitioner had challenged the orders of assessment passed by the Respondent/ Income Tax Officer denying this claim of exemption under Section 11 of the Income Tax Act, 1961. However, the appellant/ petitioner after arguing on merits for a while in an attempt to get over the preliminary objection on maintainability of the writ petitions in view of availability of alternative remedy, sought leave of the Court to withdraw the writ petitions and file statutory appeals, which was permitted. However, while

permitting the appellant/ petitioner to withdraw these writ petitions, the learned Single Judge had made observations on the merits of the appellant/ petitioner's claim which according to the learned counsel for the appellant/ petitioner would adversely affect the appellant/ petitioner's right to appeal and reduce the exercise of filing appeals, a mere formality as the appellate authority would be influenced by the observations of the learned Single Judge and would thus submit that the findings/ observations on the merits, may be set-aside.

3. To the contrary, the learned counsel for the Respondent would submit that the appellant/ petitioner having withdrawn the writ petitions, cannot maintain the present writ appeals. However, he finally concedes that the grievance of the appellant in the present batch of cases is with reference to the observations made on the merits by the learned Single Judge, while permitting the appellant/ petitioner to withdraw the writ petitions and file appeals.

4. Heard both sides. Perused the materials available on record.

5.We find merit in the submissions of the learned counsel for the appellant/ petitioner that once a writ petition is permitted to be withdrawn and the appellant/ assessee is permitted to avail statutory remedy, any observation on the merits of the case ought to be avoided. In this regard, it may be relevant to refer to the judgment of the Hon'ble Supreme Court in the case of ***Tin Plate Co. of India Ltd. v. State of Bihar, (1998) 8 SCC 272,*** wherein it was held as under:

> *"4. Learned counsel appearing for the appellant urged that the High Court has committed a grave error in making various observations touching upon the merits of the case while dismissing the writ petition on the ground of alternative remedy and thereby prejudicing the case of the appellant to be taken up before the appellate authority who was bound to decide the case in terms of the observations made by the High Court. The argument is well substantiated. It is no doubt true that when an alternative and equally efficacious remedy is open to a person, he should be required to pursue that remedy and not to invoke extraordinary jurisdiction of the High Court under Article 226 of the Constitution and where such a remedy is available, it would be a sound exercise of discretion to refuse to entertain the writ petition under Article 226 of the Constitution. In the present case, admittedly, the appellant had an alternative and equally efficacious remedy by filing an appeal before the appellate authority against the order of assessment and in view of such a remedy being available to the appellant, the High Court was right in dismissing the writ petition on the ground that the appellant has an alternative remedy available under the Bihar Sales Tax Act, 1959. However, we do not subscribe to the view of the High Court when it made a number of observations touching upon the merits of the case while dismissing the writ petition on the ground of alternative remedy. If the writ petition under Article 226 is to be dismissed on the ground of alternative remedy, the High Court is not required to express any opinion on the merits of the case which is to be pursued before an alternative forum. It is true that in the present case, the appellant's counsel in his effort to get over the objection of existence of an alternative remedy, addressed the Court on the merits of*

the case and thereby invited the observations on the merits of the case by the High Court. But in such a situation, if the High Court is to dismiss the writ petition on the ground of alternative remedy, it would be a sound exercise of jurisdiction to refrain itself from expressing any opinion on the merits of the case which ultimately is to be taken up by a person before an alternative forum."

(emphasis supplied)

6. Following the above judgment of the Hon'ble Supreme Court, the observations/findings on the merits of the case made by the learned Single Judge, in the order dated 26.07.2022 passed in the writ petitions are vacated/set-aside and the Appellate Authority is directed to decide the appeals, if filed, on merits and uninfluenced/ unobsessed by the observations of the learned Single Judge. The captioned writ appeals stand disposed of accordingly. No costs.

[R.M.D., J.] [M.S.Q., J.]
08.02.2023

Index : Yes/No
Speaking/Non-Speaking Order
Neutral Citation : Yes/No
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and
MOHAMMED SHAFFIQ, J.

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