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W.A.No.2624 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 04.01.2023

Pronounced on : 10.03.2023

CORAM

**THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN
AND
THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ**

W.A.No.2624 of 2022

B.Ramamoorthy

...Appellant

Vs.

1.The Assessment Officer,
Ward 3, Vellore,
Income Tax Department, Vellore- 632 001.

2.Deputy Commissioner of Income Tax,
Income Tax Department,
Ministry of Finance, Government of India,
Central Wing, Central Circle 2(1),
No.46, Mahatma Gandhi Road,
Nungambakkam, Chennai-600 034.

...Respondents

Prayer: Writ appeal is filed under clause 15 of the Letter Patent praying to set aside the order dated 13.09.2022 made in W.P.No.2810 of 2020 and allow this writ appeal.

For Appellant : Mr.S.Vijayakumar
for M/s.P.C.Harikumar and Associates



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For Respondents : Mr.A.P.Srinivas Babu
Standing Counsel

JUDGMENT

MOHAMMED SHAFFIQ, J.

The writ appeal is filed challenging the order of the learned Single Judge rejecting the writ petition in W.P.No.2810 of 2020 dated 13.09.2022 whereby the challenge to the order of the assessment under Section 144 of the Income Tax Act, 1961, (hereinafter referred to as "the Act") on the ground that the same is without jurisdiction

2. There was a search of the petitioner/ assessee's residence and office from 21.12.2019 to 23.12.2019. It was submitted that in view of the proviso to Section 153(1) of the Act, the limitation ought to be reckoned in terms of Section 153(1) of the Act i.e., 21 months from the end of the assessment year in which the income was first assessable under Section 153 of the Act. The impugned orders of assessment was thus submitted to have been barred by limitation.



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3. It was further submitted by the learned counsel for the appellant that the assessing officer is not the jurisdictional officer vested with the authority to pass an order of best judgment under Section 144 of the Act.

4. The order of assessment was also challenged on the premise that it suffers from violation of principles of natural justice inasmuch as the order of assessment does not even refer to the reply dated 27.12.2019, which was received by the 2nd Respondent personally which was also sent through post. The appellant has also submitted another reply dated 28.12.2019 which was received by the 2nd Respondent through RPAD on 30.12.2019, however the impugned order of assessment has been passed by the assessing officer without applying his mind to the said objections.

5. The learned Judge had however rejected the challenge to the orders of assessment and had proceeded to hold that there is no infirmity in the impugned order of assessment, the relevant portions of the order reads as under:

“3. A show cause notice dated 19.12.2019 was issued fixing the date of personal hearing on 23.12.2019 at 21.12.2019, for the



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first time, in addition 11.30 a.m. On the statements that had been sought on 24.10.2019, the petitioner sought a copy of his Savings Bank account statement in Vijaya Bank. The bank statements have, admittedly, been supplied to the petitioner, as acknowledged by the petitioner in his letter dated 28.12.2019.

4. On 24.12.2019, the Assessing Authority has issued yet another show cause notice drawing the attention of the petitioner to the fact that none of the sworn statements recorded in the course of search nor any seized material have been relied upon by the Income Tax Department in the on-going reassessment proceedings and hence the request of the petitioner for such sworn statements as well as a request for personal hearing of the persons mentioned in the letter of the petitioner, cannot be acceded to.

5. It is relevant to note that till 21.12.2019, absolutely no submissions have been made on the merits of the matter and the petitioner has been only reiterating his request for documents. For the first time on 27.12.2019, even without filing a return of income pursuant to search conducted in his premises on 22.02.2019, 23.02.2019 and 24.02.2019, he puts forth an explanation for that substantial cash deposits that have been made in the savings bank account, stating that such deposits relate to transaction in connection with the property situated at Vellore Bus stand.

6. Both the replies of the petitioner dated 24.10.2019 and 27.12.2019 are especially incriminating insofar as they refer to the involvement of heavy cash transactions in respect of the vellore property. the cash deposits. Incidentally, a vague statement is made that the cash deposits were were in the course of usual business transaction. In the absence of any return of income filed by the petitioner, such a statement cannot be countenanced or accepted. Thus, in my considered view, there is absolutely no infirmity in the impugned assessment order, neither in terms of the procedure followed by the authority nor in the conclusion that have been arrived at.”



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6. We are of the view that the order of assessment involves questions of fact and we also find that there is no finding rendered on the issue of jurisdiction which has been raised by the appellant. The above grounds need to be dealt with.

7. Having said that, we are however not inclined to examine the above questions as they would require investigation into facts which is beyond the realm of jurisdiction under Article 226 of the Constitution of India. In this regard, it may be relevant to refer to the judgment of Hon'ble Supreme Court in the case of *Authorized Officer, State Bank of Travancore and Another vs Mathew K.C*, reported in, (2018) 3 SCC 85, wherein it was held as under:

"10. In United Bank of India v. Satyawati Tondon (2010) 8 SCC 110, the High Court had restrained Satyawati Tondon v. State of U.P., [2009 scc OnLine All 2608] further proceedings under Section 13(4) of the Act, Upon a detailed consideration of the statutory scheme under the SARFAESI Act, the availability of remedy to the aggrieved under Section 17 before the Tribunal and the appellate remedy under Section 18 before the Appellate Tribunal, the object and purpose of the legislation, it was observed that a writ petition ought not to be entertained in view of



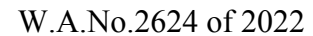
the alternate statutory remedy available holding :(SCC pp.123 & 128, paras 43 & 55).

43. Unfortunately, the High Court overlooked the settled law that the High Court will ordinarily not entertain a petition under Article 226 of the Constitution if an effective remedy is available to the aggrieved person and that this Rule applies with greater rigour in matters involving recovery of taxes, cess, fees, other types of public money and the dues of banks and other financial institutions. In our view, while dealing with the petitions involving challenge to the action taken for recovery of the public dues, etc., the High Court must keep in mind that the legislations enacted by Parliament and State Legislatures for recovery of such dues are a code unto themselves inasmuch as they not only contain comprehensive procedure for recovery of the dues but also envisage constitution of quasi-judicial bodies for redressal of the grievance of any aggrieved person. Therefore, in all such cases, the High Court must insist that before availing remedy under Article 226 of the Constitution, a person must exhaust the remedies available under the relevant statute.

.....

55. It is a matter of serious concern that despite repeated pronouncement of this Court, the High Courts continue to ignore the availability of statutory remedies under the DRT Act and the SARFAESI Act and exercise jurisdiction under Article 226 for passing orders which have serious adverse impact on the right of banks and other financial institutions to recover their dues. We hope and trust that in future the High Courts wil exercise their jurisdiction in such matters with great caution, care and circumspection"

(emphasis supplied)



8. It is open to the appellant to file an appeal within a period of 4

9. In the result, the writ appeal stands disposed of with the above

10.03.2023

Speaking order/Non-speaking order

Index: Yes/No

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To:

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