IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.02.2024

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THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P.No.15249 of 2021
W.M.P.Nos.16138 and 16140 of 2021

Mrs.Suguna Ravichandran
Wife of Late Shri.S.Ravi Chandran,
D.No.26,Saraswati Nagar,
Neelankarai,
Chennai 600 041. .. Petitioner

Vs.

1. The Income Tax Officer,
   Non-Corporate Ward 15(5),
   Room No.312, 3rd Floor, Wanaparthy Block,
   Aayakar Bhawan, 121 Mahatma Gandhi Road,
   Nungambakkam, Chennai 600 034.

2. The Principal Commissioner of Income Tax,
   121, Mahatma Gandhi Road,
   Nungambakkam, Chennai 600 034.

3. The Commissioner of Income Tax (Appeals),
   Mahatma Gandhi Road,
   Nungambakkam, Chennai 600 034.

..Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus to call for the records pertaining to the Impugned Assessment Order under Section 143(3) rws 147 of the Income Tax Act, 1961 passed by the 1st Respondent herein in DIN 20141160363 and PAN: AHCPR1681H, dated 26.12.2019 and to quash the same as illegal, arbitrary, unfair, un-reasonable and without jurisdiction and perverse on account of not following the directions and guidelines issued by Hon'ble High Court from time to time in respect of escaped Income/Scrutiny Assessment and further direct the 1st respondent herein to Re-Hear and Dispose off the same considering the documents furnished by the petitioner on merits after affording on opportunity of personal hearing.

For Petitioner : Mr.A.K.Jayaraj

For Respondents : Mrs.S.Premalatha
Junior Standing Counsel

ORDER

The writ petition is filed challenging the impugned order of assessment on the premise that the same is made in violation of principles of natural justice. The petitioner was issued with a show cause notice on 13.12.2019 wherein certain proposals were made with regard to the petitioner's liability with reference to capital gain on sale of a immovable property at (Raipur). The petitioner were to submit its reply on or before 17.12.2019. The petitioner filed a letter dated 17.12.2019, requesting time to submit its objections on 24.12.2019. The impugned order of assessment is made on 26.12.2019. It is submitted that the petitioner's request for adjournment though recorded in the assessment order has not been dealt with by the respondent. It was submitted that once a request for adjournment is made, a duty is cast on the assessing authority to inform the assessee whether the request is accepted or rejected, failure to do so would result in violation of principles of natural justice.

2. To the contrary, it is submitted by the learned counsel for the respondents that the petitioner had already filed an appeal and the same is pending consideration and therefore this Court must refuse to exercise its discretion under Article 226 of the Constitution of India in entertaining this writ petition inasmuch as the petitioner has already availed the alternate remedy.

3. I find that there is merit in the submission of the learned counsel for the Respondents inasmuch as it has been consistently held that a party cannot avail parallel remedies, in other words ride two horses at the same time. *(*Kindly see the judgment of the Hon'ble Supreme Court in the case of *Jai Singh v. Union of India,* reported in *(1977) 1 SCC 1 at page 2* and in the case of *Delhi Gate Auto Service Station v. Bharat Petroleum Corpn. Ltd.,* reported in *(2009) 16 SCC 766)*

4. However, I am inclined to direct the 3rd Respondent or his successor to dispose of the appeal pending before him against the impugned order of assessment within a period of 2 months from the date of receipt of copy of this order.

5. The writ petition stands disposed of on the above terms. No costs. Consequently, connected miscellaneous petitions are closed.

26.02.2024

Speaking (or) Non Speaking Order
Index:Yes/No
Neutral Citation: Yes/No
Spp

To:

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MOHAMMED SHAFFIQ, J.

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