IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.08.2024

CORAM :

THE HONOURABLE MR. JUSTICE S.S. SUNDAR

AND

THE HONOURABLE MR. JUSTICE SATHI KUMAR SUKUMARA KURUP

Rev.Appl.No.153 of 2021

Salem Sree Ramavilas Chit Company
Private Limited,
Represented by its President, N.K.Ramalingam,
28, Sree Raamanivasam,
Arya Vysyal Street, Shevapet,
Salem – 636 002. ... Petitioner

Vs.

The Deputy Commissioner of Income Tax,
Circle 1(1),
Income Tax Office,
No.3, Gandhi Road, Salem – 636 007. ... Respondent

Prayer : Review Application filed under Order 47 Rule 1 read with Section 114 of Code of Civil Procedure to review the order dated 04.08.2021 made in W.A.No.1872 of 2021 on the file of this Court.

For Petitioner	:	Mr.G.Baskar
For Respondent	:	Dr.B.Ramaswamy Senior Standing Counsel (Income Tax Department)

ORDER

(Order of the Court was made by **S.S. SUNDAR, J.**)

This Review Application is filed to review the order of this Court dated 04.08.2021 made in W.A.No.1872 of 2021.

2.Brief facts that are necessary for the disposal of this Review Application are as follows :

2.1.The review petitioner is the writ petitioner, who challenged the order of the Deputy Commissioner of Income Tax. One of the main grounds on which the petitioner challenged the impugned order of assessment dated 27.12.2019 before this Court was that no opportunity was given to the petitioner to explain the entire transaction pertaining to cash flow upto 08.11.2016. It is also the case of the petitioner that the Income Tax Department, to pave way for an objective assessment without human interaction, introduced e-Governance for conduct of assessment proceedings electronically.

2.2.Learned Single Judge of this Court specifically found that the order impugned in the writ petition is in violation of principles of natural justice. Hence, the impugned order was set aside by the learned Single Judge and the case was remitted back to the Assessing Officer to pass a fresh order within a period of 60 days. A further observation is also made by the learned Single Judge to the effect that the Assessing Officer should give an objective consideration on facts based on records.

2.3.At the instance of the respondent in the writ petition, the Assessing Officer, an Appeal was preferred in W.A.No.1872 of 2021 mainly on the ground that the writ petitioner has an effective alternative remedy of appeal and that therefore, the writ petition ought not to have been entertained. This Court, by order dated 04.08.2021, allowed the appeal only on the ground that an effective alternative remedy is available to the petitioner under the Statute. The observation of the learned Single Judge with regard to the procedure for e-Governance, etc., was also commented by the Bench on the ground that the writ petitioner has not challenged the procedure that was introduced (i.e., against e-proceedings facility). Finally, this Court allowed the Writ Appeal, setting aside the order of the learned Single Judge in the writ petition, with a specific direction to the effect that the observations and findings regarding the effectiveness of the e-Governance implemented by the Income Tax Department are to be set aside. A further direction was issued to the Appellate Authority to consider all the grounds that may be raised by the petitioner as against the order of assessment dated 27.12.2019.

2.4.To review the order in the Writ Appeal, the above Review Application is filed.

3.Learned counsel appearing for the review petitioner relied upon the judgment authored by the same Hon'ble Judge, wherein, the assessment order was set aside only on the ground of violation of principles of natural justice. In the said judgment, despite availability of alternative remedy, this Court has specifically held that the writ petition is maintainable. This Court is unable to agree with the view expressed by the Division Bench in the order dated 04.08.2021 in W.A.No.1872 of 2021 to hold that the writ petition challenging the assessment order cannot be entertained for availability of alternative remedy, particularly when there is a specific allegation of violation of principles of natural justice. This Court, in a review petition, cannot consider the question whether the order is erroneous or that a different order would have been passed. In other words, the scope of review is limited to the error apparent on the face of the record. If the order itself is challenged on the ground that it is erroneous, Order 47 Rule 1 of Civil Procedure Code cannot be invoked to seek review of the order. The distinction between 'erroneous order' and 'an order suffering from error apparent on the face of the records' has been repeatedly explained by the Hon'ble Supreme Court and this Court in several judgments. Even though this Court is of the view that the writ petition could have been entertained and the order of the learned Single Judge appears to be more appropriate on the admitted facts, is unable to entertain this review application.

4.Therefore, this Review Application is dismissed. No costs.

(S.S.S.R., J.) (S.S.K., J.)
28.08.2024

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Internet : Yes
Index : Yes / No
Neutral citation : Yes / No

S.S. SUNDAR, J.

and
SATHI KUMAR SUKUMARA KURUP, J.

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To

The Deputy Commissioner of Income Tax,
Circle 1(1),
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