BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 20.03.2024

CORAM:

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR
and
THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

W.A.(MD)Nos.493 & 494 of 2024
and
C.M.P.(MD)No.3980 & 3982 of 2024

Karthick V.R.Thondaiman : Appellants in both Writ Appeals

Vs.

1.The Assessment Unit National Faceless Assessment Centre,
Income Tax Department,
North Block,
New Delhi.

2.The Income Tax Officer,
Ward 1(1), 2nd Floor,
Trichy Main Building,
Williams Road Cantonment,
Trichy – 620 015. : Respondents in both Writ Appeals

COMMON PRAYER: Writ Appeals filed under Clause 15 of Letters Patent, praying to set aside the orders passed by this Court in W.P.(MD)Nos.15715 & 15716 of 2023 dated 08.09.2023.

For Appellant	:	Mr.A.Navaneetha Krishnan Senior Counsel for Mr.Pandi Thennavan
For Respondents	:	Mr.N.Dilip Kumar Standing Counsel [In both Writ Appeals]

COMMON JUDGMENT

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[Common Judgment of the Court was delivered by **D.KRISHNAKUMAR, J.]**

These Writ Appeals have been filed challenging the orders passed by this Court in W.P.(MD)Nos.15715 & 15716 of 2023 dated 08.09.2023.

2.The appellants have preferred the present Writ Appeals against the orders of the Writ Court, wherein it has been held as follows:

> *'12. After hearing the rival claims this Court had given its anxious consideration. The petitioner has entered into sale agreement with M/s.Kalati Agencies Private Limited, since the said Agency has not paid further sale consideration the sale agreement has not culminated into sale deed. In the meanwhile, M/s.Shanthi Guru Infra had executed a sale deed, dated 27.11.2015. As on date, the sale deed is in existence and it is not cancelled*

as known to law. The petitioner has relied on the Bank statement, where the petitioner has admittedly returned the sale consideration, which the petitioner has received from the M/s. Shanthi Guru Infra. But it is an admitted fact that the said M/s. Shanthi Guru Infra has not encashed the amount. When there is sale deed and when the M/s. Shanthi Guru Infra had not encashed the amount then the petitioner is liable for capital gains. In such circumstances, the claim of the petitioner cannot be considered. Therefore, the Assessment order passed by the respondents cannot be termed as illegal. The petitioner is directed to file an appeal before the Appellate Authority by furnishing all the documents and the appellate authority shall consider the same without insisting on limitation.

13. Further the suit filed by the M/s.Kalati Agencies Private Limited is still pending. The rights of the parties can be determined based on the final verdict in the suit. The petitioner is also at liberty to file a suit impleading the Income Tax Department also as a party to declare the sale as null and void, so that the petitioner can come out of the clutches of capital gains. The petitioner shall file a suit within a period of Four weeks from the date of receipt of a copy of the Order. Until then the respondents shall not take any coercive steps based on the assessment order.'

3.The learned Standing Counsel for the respondents strongly objected for entertaining these appeals by stating that the appellant has got an efficacious alternate remedy of filing an appeal before the appellate authority and therefore, the impugned order is perfectly in order and warrants no interference.

4.Further, learned Standing Counsel for the respondents submitted that the learned Single Judge in paragraph No.13 of the said order has directed the appellant to file a suit impleading the Income Tax Department to declare the sale as null and void and he has no objection for setting aside the said portion of the impugned order passed by the learned Single Judge, since an appellate remedy is available to the appellant.

5.Considering the submissions of the parties, this Court set aside the impugned order of the learned Single Judge, only to the extent of directing the petitioner, to file a suit impleading the Income Tax Department also as a party to declare the sale as null and void, so that the petitioner can come out of the clutches of capital gains. Insofar as the other directions of this Court are concerned, they remain unaltered.

6.Accordingly, these Writ Appeals are partly allowed. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

[D.K.K.,J.] & [R.V.,J.]
20.03.2024

Neutral Citation : Yes/No
Index : Yes/No
Internet : Yes/No
MR

To

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D.KRISHNAKUMAR, J.

and

R.VIJAYAKUMAR, J.

MR

COMMON JUDGMENT MADE IN

W.A.(MD)Nos.493 & 494 of 2024

20.03.2024