BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **11.12.2024**

CORAM:

THE HONOURABLE MR.JUSTICE **K.KUMARESH BABU**

W.P.(MD) No.30005 of 2024 &
WMP.Nos.25261 of 2024

T.Navaneethakrishnan ... Petitioner

/vs./

1.The Commissioner of Income Tax (Appeals),
Income Tax Department,
National Faceless Appeal Centre,
Delhi

2.The Income Tax Officer,
Non Corporate Ward – 2(5),
No.2, V.P.Rathinasamy Nadar Road,
Bibikulam, Madurai.

3.The Assessing Officer,
Non Corporate Ward – 2 (5)
No.2, V.P.Rathinasamy Nadar Road,
Bibikulam, Madurai. ... Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari to call for the records relating to the impugned order in ITBA/NFAC/S/250/2024-25/1070388371(1) dated 15.11.2024 passed by the first respondent confirming the impugned order in PAN:AKGPN2470H/2014-15, dated 21.12.2019 passed by the second respondent and quash the both.

For Petitioner : Mr.H.Arumugam for
Mr.P.Murugesan

For Respondents : Mr.N.Dilip Kumar Standing Counsel
for RR1 to 3

ORDER

Heard Mr.H.Arumugam learned counsel appearing for Mr.P.Murugesan, learned counsel appearing for the petitioner and Mr.N.Dilip Kumar, learned Standing counsel appearing for the respondents.

2. The learned counsel for the petitioner would submit that second respondent had passed an order in violation of principles of natural justice which had not been considered by the Appellate Authority, the said order was confirmed and hence, the said orders should be set aside and remitted back to the second respondent for passing a fresh order of assessment.

3. On the contrary, Mr.N.Dilip Kumar, the learned Standing Counsel

appearing on behalf of the respondents would contend that having filed an appeal against the order which the petitioner complains of has been in violation of principles of natural justice, an order has been passed on merits against which the petitioner has got an appeal remedy. Without exhausting the appellate remedy, the petitioner cannot approach this Court under Article 226 of the Constitution of India as no prejudice could have been caused to the petitioner, as he had already filed an appeal and orders on merits including the contention of the petitioner on violation of principles of natural justice had been made. Therefore, he would pray this Court for dismissal of the Writ Petition.

4. I have considered the rival submissions made by the learned counsels appearing on either side and perused the materials available on record.

5. The Writ Petition had been filed against an order passed by the second respondent which was confirmed by the first respondent against which an efficacious alternative remedy is available, which could be maintained only under certain circumstances. The Hon'ble Apex Court in its judgment in the case of ***Assistant Commissioner of State Tax and others vs. Commercial Steel***

Limited reported in ***2021 SCC Online 884***, had held that a Writ Petition can be entertained in an exceptional circumstances, where there is :-

(i) a breach of fundamental rights;

(ii) a violation of the principles of natural justice;

(iii) an excess of jurisdiction; or

(iv) a challenge to the vires of the statute or delegated legislation.

6. In the present case, even though, the Writ Petitioner had raised an issue of violation of principles of natural justice, as rightly pointed out by the learned Standing Counsel, the order passed by the second respondent for which violation is complained, the petitioner had filed an appeal before the first respondent and the first respondent had also passed orders on merits in appeal.

7. In such view of the matter, I am of the view that the Writ Petition could not be entertained and the petitioner can always move an appeal available under the law challenging the same.

8. In fine, this Writ Petition is dismissed with liberty to the petitioner to file an appeal as available against the said orders impugned in this Writ Petition. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

11.12.2024

Index : Yes / No
Internet : Yes / No
gba

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K.KUMARESH BABU, J.

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