IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.9.2007

CORAM

THE HONOURABLE MR. JUSTICE K.RAVIRAJA PANDIAN
AND
THE HONOURABLE MRS. JUSTICE CHITRA VENKATARAMAN

W.A.No.2664 of 2001

V. Nachiappan .. Appellant

versus

Income Tax Officer
Ward-I (3)
Karaikudi - 630 002. .. Respondent

Writ Appeal filed under clause 15 of Letters Patent (Appellate Jurisdiction) against the order dated 26.7.2001 in W.P.No.13548 of 2001. This petition presented to this Court under Article 226 of constitution of India to issue a writ of Certiorari calling for the records in the matter of Income Tax Assessment of the petitioner in the capacity of Legal heir of his fathers estate in the proceedings of the respondent in file No.47-042-HN-4807 (3213-V/91-92) for the assessment year 1991-92 including the order passed therein dated 01.03.2001 and quash the said order.

For Appellant : Mr. R. Srinivasan

J U D G M E N T

(Judgment of the Court was delivered by Chitra Venkataraman,J.)

The writ appeal is filed against the order of the learned single Judge dated 26.7.2001 dismissing the writ petition on the ground of availability of alternative remedy. The appellant herein preferred a writ petition challenging the order of re-assessment passed under Section 147 of the Income Tax Act, 1961, (hereinafter referred to as the `Act') on the ground that when there is no whisper in the notice as to any non-disclosure of primary facts, the assumption of jurisdiction itself is not called for under Section 147. Hence, for want of jurisdiction on the part of the Assessing Officer, the proceedings are unsustainable.

2. The learned single Judge, in his order dated 26.7.2001, pointed out that admittedly, the appellant had the right of an

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appeal provided for under the Act; that the decisions of the Apex Court reported in AIR 1970 SC 645 (CHAMPALAL BINANI Vs. COMMISSIONER OF INCOME TAX) and AIR 1983 SC 603 (TITAGHUR PAPER MILLS CO. LTD. Vs. STATE OF ORISSA) clearly held that "when there is a hierarchy of authorities for getting adequate relief, the Writ Petition under Article 226 of the Constitution cannot be entertained. Learned Judge further pointed out that the the real grievance of the assessee, as per the submission of the counsel, was that he would not get an interim order of stay of recovery from the appellate authority. Therefore, he had moved this Court. The learned single Judge rejected the plea of the assessee that it could not be ground for invoking the jurisdiction of this Court under Article 226 of the Constitution of India to maintain the writ petition. Thus dismissing the writ petition, learned single Judge gave liberty to the petitioner/appellant herein to move the authority with an application for interim stay, which would be considered on merits.

3. As against this order in the writ petition, the present writ appeal is preferred contending that when there is a lack of jurisdiction, the invoking of jurisdiction under Article 226 of the Constitution of India is well maintainable and the stand of the appellant could not be faulted with. We do not agree with the submission of the learned counsel for the appellant.

4. While considering a similar plea on invoking the jurisdiction of the Court under Article 226, when the statutory remedies were available in the decision reported in 279 ITR 342 (DR.K.NEDUNCHEZHIAN Vs. THE DEPUTY COMMISSIONER OF INCOME TAX AND THE COMMISSIONER OF INCOME TAX), a Division Bench of this Court held that when the statute provides for a hierarchy of appeals, the aggrieved party must exhaust the statutory remedies and not to resort to the constitutional remedy under Article 226. This Court further held that it will be a sound exercise of discretion to refuse to interfere in a petition under Article 226 of the Constitution unless there are good grounds to do otherwise. Again, in the decision reported in 2005 (1) CTC 1 (INDIAN ADDITIVES LTD. EXPRESS HIGHWAY, CHENNAI Vs. INDIAN ADDITIVES EMPLOYEES UNION), this Court reiterated the said proposition of law. Referring to the reliance placed on the decision of the Supreme Court reported in (1998) 8 SCC 1 (WHIRLPOOL CORPORATION Vs. REGISTRAR OF TRADE MARKS), this Court held:

> " No doubt, it is well-settled that alternative remedy is not an absolute bar a writ petition but it is equally well-settled that ordinarily if there is an alternative remedy, the discretion under Article 226 should not be exercised and the party should be relegated to avail the alternative remedy. Hence, even if

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there is violation of any of the Fundamental Rights or of natural justice or the proceedings are without jurisdiction, the High Court under Article 226, on the facts of the particular case, can still dismiss the writ petition on the ground of availability of alternative remedy and ordinarily it should do so if there is an alternative remedy. "

The Division Bench followed the Supreme Court decisions reported in AIR 1995 SC 1715 (RAJASTHAN STATE ROAD TRANSPORT CORPORATION Vs. KRISHNA KANT), (2004) 4 SCC 268 (U.P.STATE BRIDGE CORPORATION LTD. Vs. U.P. RAJYA SETU NIGAM S.KARAMCHARI SANGH) and (1998) 8 SCC 1 (WHIRLPOOL CORPORATION Vs. REGISTRAR OF TRADE MARKS).

5. On the above-said settled principles of law, we do not find there exists any extraordinary circumstance warranting interference under Article 226. We also do not find any justification to accept the submission by the learned counsel for the appellant that on account of want of jurisdiction, the order passed by the Assessing Authority has to be set aside and that the assessee need not be driven to the statutory remedies and that when the issue raised goes to the very root of the matter, this Court can deal with the same . It is not denied by the learned counsel that the contention raised herein as to the jurisdiction can equally effectively be raised before the appellate authority who has every jurisdiction under the Act to consider the same and pass orders.

6. Taking note of the submission made by the learned counsel for the appellant, in the face of the law declared by this Court following the Apex Court decision, we do not find any ground to accept the plea of the appellant to interfere in this matter. Consequently, the writ appeal is dismissed with a direction that on payment of 50% of the tax demanded, which includes surcharge at 12%, within a period of three weeks from the date of receipt of a copy of this order, the appellant will be entitled to file an appeal within two weeks thereafter. If and when such an appeal is filed, the same shall be entertained and shall be disposed of within the period of limitation.

The writ appeal is disposed of with the above direction. No costs.

Sd/
Asst.Registrar

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Sub Asst.Registrar

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To:

The Income Tax Officer
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