(2007) 03 MAD CK 0298

In the Madras High Court

Case No : Writ Petition No. 13786 of 2004

Marshals' Supersoft Technologies Limited — APPELLANT

Vs

The Income Tax Officer — RESPONDENT

Date of Decision : 12-03-2007

Acts Referred:
Constitution of India, 1950 — Article 226
Income Tax Act, 1961 — Section 147, 148, 80IA

Citation : (2008) 296 ITR 77

Hon'ble Judges : P.D. Dinakaran, J;Chitra Venkataraman, J

Bench : Division Bench

Advocate : V. Ramachandran, for Anita Sumanth, for the Appellant; Pushya Sitaraman, Senior Standing Counsel, for the Respondent

Final Decision : Dismissed

Judgement

Chitra Venkataraman, J.—This writ petition is preferred against the order of assessment dated 30.3.2004, seeking a writ of certiorari to quash the same. The petitioner herein challenges the said order on the question of jurisdiction that for the purpose of assessment and other related matters under the Companies Act, the Income Tax Act and other enactments, the registered office is at Pondicherry. Apart from questioning the jurisdiction, the assessee challenges the order of assessment u/s 148 on merits too.

2. It is seen that the assessee filed its return of income for 2000-2001 with the office of the respondent herein and claimed tax benefits u/s 80IA of the Income Tax Act. Admittedly, the return of income was deficient for want of financial statements. The said defect was not rectified within the time stipulated, in spite of a notice calling upon the petitioner to do so. The assessment was reopened u/s 147. The petitioner had filed the financial statement, but asked for the return of income filed originally as a return, in response to Section 148. The petitioner was called upon to furnish the required particulars as regards its claim for benefit u/s 80IA. Summons issued to the Directors were returned unserved with postal

remarks "not known". The assessment was completed on merits, and rejecting the plea of jurisdiction.

3. Mr. V. Ramachandran, learned senior counsel appearing for the petitioner, submitted that considering the total lack of jurisdiction to assess this petitioner u/s 148, the writ petition filed merited consideration by this Court. He also referred to the orders passed by this Court in other writ petitions and prayed for interference.

4. The Revenue has filed its counter affidavit.

5. Learned standing counsel appearing for the respondent, however, submitted that considering the admitted position that a remedy is available to the assessee by way of an appeal to the Commissioner of Income Tax (Appeals), the writ petition is not maintainable. She also submitted that the contentions that are taken here, merit to be taken only before the statutory authorities and there are no extraordinary circumstances for this Court to exercise jurisdiction under Article 226 of the Constitution of India.

6. Learned senior standing counsel for Income Tax also pointed out that in none of the documents filed by the petitioner, was there any mention of the fact that petitioner''s registered office is in Pondicherry. Only when the notice was issued u/s 148, did the assessee/petitioner take the plea on the jurisdiction aspect that its registered office was in Pondicherry. The respondent states that the petitioner failed to furnish any documentary evidence to support its claim. The respondent submitted that the petitioner sought for the transfer of its assessment files, to pondicherry. The revenue contends that, in any event, this would not exonerate the responsibility of the petitioner to substantiate its claim with necessary evidence. The revenue further stated that the petitioner sought for adjournments on several occasions on some pretext or the other, and after several adjournments, it submitted that all the books, computers and records were destroyed in a fire accident in Chennai on 6.1.2002. In support of this, the petitioner filed a copy of the First Information Report dated 11.11.2002, nearly ten months after the alleged fire accident took place. The respondent also pointed out that except these records, no other records were stated to have been damaged. It is further stated that the petitioner made itself unavailable at all known addresses even for service of notices and letters. A letter was also addressed to the Pondicherry address seeking information on the claim of benefit u/s 80IA. The notices dated 16.1.2004 and 28.1.2004 issued to the Pondicherry address furnished by the petitioner were returned with a remark "left". Notices were again sought to be served on the petitioner at the Marshalls Road address in Madras. These were however refused to be received on the ground that the company'' s address had been changed to Pondicherry. Considering this, and the attitude of the assesssee, the learned standing counsel submitted that the petitioner is not entitled to any relief.

7. We agree with the submissions made by the learned standing counsel

appearing for the respondent herein on the question of availability of alternative remedy. A perusal of the orders impugned herein show that the issues raised in the writ petitions were taken before the respondent too, who had passed the orders after considering the same. Since the issue involved in the writ petitions required investigation into the facts, including the issue on jurisdiction, we do not find any extraordinary circumstance to go into the merits. It is a matter for the statutory authorities to consider if and when an appeal is preferred.

8. Admittedly, the assessee has an alternative remedy, and it is not denied that it is an efficacious remedy. In a recent decision reported in Dr. K. Nedunchezhian Vs. The Deputy Commissioner of Income Tax and The Commissioner of Income Tax, , a Division Bench of this Court, affirmed the decision reported in Dr. K. Nedunchezhian Vs. Deputy Commissioner of Income Tax, and following the decision of the Apex Court, held that when there is an alternative remedy, ordinarily, writ jurisdiction under Article 226 of the Constitution of India should not be invoked and that the principle applies fully to the proceedings herein too.

9. Considering the issues involved and applying the decision cited above, we dismiss the writ petitions. It is open to the assessee/petitioner to prefer appeal, if they deem fit, within a period of thirty days from the date of receipt of a copy of this order. No costs. Consequently, the connected M.P. No. 16203 of 2004 and W.V.M.P. No. 571 of 2005 are closed.