

(2017) 01 MP CK 0235
In the Madhya Pradesh High Court
Case No : 1098 of 2017

Premal Dwivedi

APPELLANT

Vs

State of Madhya Pradesh & Ors

RESPONDENT

Date of Decision : 25-01-2017

Acts Referred:

Constitution of India, Article 226 -
Power of High Courts to Issue certain writs
Income Tax Act, 1961, Section 147, Section 147,

Citation : (2017) 01 MP CK 0235

Hon'ble Judges : Rajendra Menon, H.P.Singh

Bench : Single Bench

Advocate : Sumit Nema, Sanjay Lal

Judgement

1. Challenge in this writ petition under Article 226 of the Constitution of India is made to a reassessment order dated 30.12.2016 passed by the Income Tax authorities in proceedings held after a notice was issued under Section 148 of the Income Tax Act. As the writ petition has been filed directly before this Court challenging the order of assessment without taking recourse to the remedy of appeal provided i.e. First Appeal to the Commissioner (Appeals) and thereafter further appeal to the Income Tax Appellate Tribunal and finally an appeal under Section 260-A to this Court, a preliminary objection has been raised by Shri Sanjay Lal, learned counsel for the Revenue to say that this writ petition is not maintainable and the petitioner should be relegated to take recourse to the remedy available of filing an appeal under the three tier appellate, statutory remedy available to the petitioner. However, Shri Sumit Nema argues that in this case the proceedings initiated by issuing notice under Section 148. The manner of assessment undertaken and the basis for assessment are all perverse, illegal and impermissible in law and, therefore, exercise of extraordinary jurisdiction is permissible.

2. Shri Sumit Nema, learned counsel invites our attention to certain documents

seized in a search and seizure operation available at page 309 of the paper book and argued that the entire proceedings for reassessment has been initiated on the basis of certain entries made in these loose papers which has no evidentiary value and, therefore, in view of the recent judgment of the Supreme Court in the case of Common Cause (A Registered Society) Vs. Union of India, [2017] 77 Taxman 245 (SC), the assessment undertaken on the basis of such inadmissible evidence is clearly unsustainable. Further reference is made to another judgment of the Supreme Court in the case of Jeans Knit (P.) Ltd. Vs. Deputy Commissioner of Income Tax, Bangalore, [2017] 77 Taxman 176 (SC), to say that the proceedings initiated in this case under Section 147 is unsustainable and, therefore, interference can be made in the writ petition.

3. Shri Sumit Nema, learned counsel further invites our attention to a pending writ petition before this Court being W.P.No.10241/2016 (Malay Shrivastava Vs. The Deputy Commissioner of Income Tax) and argues that in the said case which arises out of the same search and seizure operation, the assessment order is under challenge and in the petition the notice of demand issued after the assessment has been stayed. Accordingly, Shri Sumit Nema argues that the petition can be entertained. However, Shri Sanjay Lal, learned counsel invites our attention to the judgment of the Supreme Court in the case of Commissioner of Income Tax Vs. Vijaybhai N. Chandrani, (2013), 261 CTR 0225 and the judgment of Madras High Court in the case of Joint Commissioner of Income Tax Vs. Kalanithi Maran, (2014) 89 CCH Page 149 to say that the writ petition is not maintainable.

4. We have heard learned counsel for the parties at length and we find that the petitioner has challenged the order of assessment before this Court and against the order of assessment right to statutory appeal is available to the petitioner.

5. In the case of Common Cause (A Registered Society) (supra) relied upon by Shri Sumit Nema, learned counsel the dispute was with regard to the registration of FIR against the High Constitutional Authorities based on the entries made on a loose papers seized in the matter of search and seizure. Holding the entries made in the loose papers not to be sufficient evidence for directing registration of an FIR and enquiry, under the Criminal Justice System, Hon"ble Supreme Court has dismissed the petition, we find that the said judgment will not assist the petitioner and it does not deal with the question as to whether the writ petition is maintainable even after the assessment is concluded and an order of assessment is passed and when against the order of assessment the remedy of appeal are available both to the Commissioner Income Tax, the Income Tax Appellate Tribunal and thereafter under Section 260-A to the High Court. Similarly, in the case of Jeans Knit (P.) Ltd. (supra) interference at the stage of issuance of notice under Section 148 of the Income Tax was considered and the question was with regard to recording reasons for reopening of assessment. In this case, that stage of show cause notice under Section 148 is already over. The show cause notice under Section 148 was issued on 27.03.2014 and the petitioner raised the

objection to the same on 23.04.2014. This was rejected and thereafter assessment proceedings were held and now the assessment proceedings have been finalised and we find that in the case of another assessee one Shri Narottam Mishra after assessments were completed, he challenged the same in a proceedings before this Court under Section 260-A of the Income Tax Act. That being so, we are of the considered view that the judgment relied upon by Shri Sumit Nema, learned counsel may not help him. On the contrary, judgment relied upon by Shri Sanjay Lal namely the judgment of the Supreme Court in the case of Vijaybhai N. Chandrani (supra) and another judgment of the Supreme Court in the case of Commissioner of Income Tax and others Vs. Chhabil Dass Agarwal (2014) 1 SCC 603 clearly lays down the principle that when statutory forum are created for redressal of a grievance, writ petition should not be entertained ignoring such statutory dispensation. Similar is the view taken by Madras High Court in the case of Kalanithi Maran (supra). Even though we are conscious of the fact that in exceptional circumstances there are deviation and exception to the aforesaid rule but in this case, we find that except for contending that the loose papers and the entries made in the loose papers cannot be treated as evidence to reopen the assessment, we find that in the assessment order detailed analysis of the various aspects of the matter has been done and the assessment has been completed. That being so, at this stage when the assessment is already over after notice under Section 148 was issued and when proceedings held under Section 147 has attained finality in view of the assessment order made vide Annexure P-25 on 30.12.2016, it is not appropriate for this Court to go into various aspects of the matter and entertain the writ petition, merely because in some other case like Malay Shrivastava (supra), the writ petition is pending consideration.

6. In the present case, once we find that a statutory remedy of appeal is available to the petitioner and in view of the law laid down by the Supreme Court in the case of Chhabil Dass Agarwal (supra) and Vijaybhai N. Chandrani (supra), the statutory remedy is available to the petitioner, it is not appropriate to take any indulgence in the matter by passing the statutory remedy available.

7. Accordingly, granting liberty to the petitioner to take recourse to the statutory remedy of appeal available for challenging the assessment order, we dispose of this writ petition.

8. Accordingly, the petition is disposed of.