(2007) 09 MAD CK 0068

In the Madras High Court

Case No : W.A. No. 2664 of 2001

V. Nachiappan APPELLANT

Vs

Income Tax Officer RESPONDENT

Date of Decision : 20-09-2007

Acts Referred:

Constitution of India, 1950 — Article 226
Income Tax Act, 1961 — Section 147

Citation : (2007) 09 MAD CK 0068

Hon'ble Judges : K. Raviraja Pandian, J;Chitra Venkataraman, J

Bench : Division Bench

Advocate : R. Srinivasan, for the Appellant;

Judgement

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 u/s

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 u/s 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 appeal provided for under

the Act; that the decisions of the Apex Court reported in Champalal Binani Vs. The Commissioner of Income Tax, West Bengal and Others, and

Titaghur Paper Mills Co. Ltd. and Another Vs. State of Orissa and Others, 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 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 Indian Additives

Ltd. Vs. Indian Additives Employees Union and Another, , this Court reiterated the said proposition of law. Referring to the reliance placed on the

decision of the Supreme Court reported in Whirlpool Corporation Vs. Registrar of Trade Marks, Mumbai and Others, , 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 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 Rajasthan State Road Transport Corporation and Another Vs. Krishna

Kant and Others, , U.P. State Bridge Corporation Ltd. and Others Vs. U.P. Rajya Setu Nigam S. Karamchari Sangh, and Whirlpool Corporation

Vs. Registrar of Trade Marks, Mumbai and Others, .

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.