bITEM NO.46 COURT NO.1 SECTION IIIA

S U P R E M E C O U R T O F I N D I A

RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Civil) Nos.1736-1737/2009

(From the judgement and order dated 05/02/2008 in WA No.827/2007 and MP No.1/2007 of The HIGH COURT OF MADRAS)

INCOME TAX OFFICER Petitioner(s)

VERSUS

M.PIRAI CHOODI Respondent(s)

(With appln(s) for c/delay in filing SLP, c/delay in refiling SLP prayer for interim relief and office report)

Date: 19/11/2010 These Petitions were called on for hearing today.

CORAM :
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE K.S. PANICKER RADHAKRISHNAN
HON'BLE MR. JUSTICE SWATANTER KUMAR

For Petitioner(s)
Mr. R.P. Bhatt,Sr.Adv.
Ms. Bhakti Pasrija,Adv.
Ms. Rachana Joshi Issar,Adv.
Mr. B.V. Balaram Das,Adv.

For Respondent(s)
Mr. K.V. Vijayakumar,Adv.
Mr. T. Ayyasamy,Adv.
Mr. T.R.B. Sivakumar,Adv.

UPON hearing counsel the Court made the following

O R D E R

Heard learned counsel on both sides.
Delay condoned.
Leave granted.
The civil appeals stand disposed of.

[Alka Dudeja] [Madhu Saxena]
A.R.-cum-P.S. Assistant Registrar

[Signed order is placed on the file]

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS.9756-9757 OF 2010
(Arising out of S.L.P. (C) Nos.1736-1737 of 2009)

Income Tax Officer ...Appellant(s)

Versus

M. Pirai Choodi ...Respondent(s)

O R D E R

Heard learned counsel on both sides.

Leave granted.

In this case, the High Court has set aside the order of assessment on the ground that no opportunity to cross-examine was granted, as sought by the assessee. We are of the view that the High Court should not have set aside the entire Assessment Order. At the highest, the High Court should have directed the Assessing Officer to grant an opportunity to the assessee to cross-examine the concerned witness. Be that as it may, we are of the view that, even on this particular aspect, the assessee could have gone in appeal to CIT (Appeals). The assessee has failed to avail the statutory remedy. In the circumstances, we are of the view that the High Court should not have quashed the assessment proceedings vide impugned order.

....2/-

Consequently, the impugned order is set aside. Liberty is granted to the assessee to move CIT (Appeals). It is made clear that the assessee herein will move the CIT (Appeals) within a period of six weeks from today.

Accordingly, these civil appeals stand disposed of.

..........................CJI.
[S.H. KAPADIA]

...........................J.
[K.S. PANICKER RADHAKRISHNAN]

...........................J.
[SWATANTER KUMAR]

New Delhi,
November 19, 2010.