IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 5.2.2008

CORAM

THE HONOURABLE Mr. JUSTICE P.D.DINAKARAN
and
THE HONOURABLE MR. JUSTICE R.REGUPATHI

Writ Appeal No.827 of 2007
and
M.P.No.1 of 2007

M. Pirai Choodi .. Appellant

vs.

The Income Tax Officer
Business Ward II(2)
Chennai 600 034. .. Respondent

Writ Appeal under Clause 15 of the Letters Patent against the order dated 21.2.2007 made in Writ Petition No.3247 of 2007.

For Appellant : Mr.T.Ayyasamy
For Respondent : Mr.Naresh Kumar
Jr. Standing Counsel

JUDGMENT
(Delivered by P.D.DINAKARAN,J.)

The unsuccessful writ petitioner has preferred the above writ appeal against the order of the learned single Judge dated 21.2.2007 made in Writ Petition No.3247 of 2007, where the learned Judge refused to quash the assessment order dated 29.12.2006 for the assessment year 2004-2005 made under 143(3) of the Income-tax Act, on the ground that the writ petitioner has got an alternative remedy to prefer a statuary appeal before the Appellate Tribunal.

2. It is general rule that it may not be proper to entertain the writ petitions when effective alternative remedy by way of statutory appeal is available vide Titaghur Paper Mills Co. Ltd. and another vs. State of Orissa (53 STC 315, Ashok Leyland Limited vs. Union of India and others [(1997) 105 STC 152] and State of Goa and others vs. Leuko Plast (India) Ltd. (105 STC 318). But, the above general rule is subject to exceptions as laid by the Apex Court in Harbanslal Sahnia vs. Indian Oil Corporation Ltd., [(2003) 2 SCC 107], where the Apex Court has held that in spite of availability of the alternative remedy, the High Court may still exercise its writ jurisdiction in at least three contingencies: viz., (1) where the writ petition seeks enforcement of any of the fundamental rights; (ii) where there is failure of principles of natural justice; or (iii) where the orders or proceedings are wholly without jurisdiction or the vires of an Act is challenged.

3. The present case rightly attracts the second exception viz., the failure of principles of natural justice in the sense that the respondent-department refused to admit the agricultural income of Rs.11,32,232.42 for the assessment year 2004-05 of the writ petitioner/appellant (assessee) by placing reliance on the statement of the Village Administrative Officer, overlooking the materials furnished by the assessee to substantiate his agricultural activity, viz., (1) Chitta Adangal for the relevant periods, (2) Proof for purchase of agricultural inputs and sale of agricultural products, (3) Year-wise chart showing the expenses incurred for the agricultural activities, (4) Application capital in the crops/herb and (5) Books of Accounts for the business activities for relevant period.

4. According to the appellant/writ petitioner/assessee, in spite of the documentary evidence furnished to substantiate the agricultural income to the tune of Rs.11,32,232.42 for the assessment year 2004-05, the respondent/assessing authority had chosen to overlook the same and refused to admit the said agricultural income for the assessment year 2004-05 merely based on a statement alleged to have been obtained from the Village Administrative Officer behind the appellant/writ petitioner/assessee.

5. Admittedly, the appellant/writ petitioner/assessee was not present when the statement of the Village Administrative Officer was obtained by the assessing authority. We find some force in the contention of the appellant/writ petitioner/assessee that such a statement obtained from the Village Administrative Officer behind the appellant/writ petitioner/assessee depriving him an opportunity to cross-examine the Village Administrative Officer would amount to violation of principles of natural justice and therefore, would vitiate the assessment order.

6. Hence, we are satisfied that there is a glaring violation to the principles of natural justice apparent on the face of the records, which fact was not, in our considered opinion, properly appreciated by the learned single Judge while dismissing the writ petition on the ground of alternative remedy. Accordingly, the writ appeal is allowed and the order of the learned single Judge is set aside. Consequently, the impugned assessment order is quashed. No costs. Connected M.P.No.1/2007 is closed.

ATR

To

The Income Tax Officer
Business Ward II(2)
Chennai 600 034.