



W.A.No.1420 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED 13.07.2022

CORAM

THE HONOURABLE Mr. JUSTICE R. MAHADEVAN
AND
THE HONOURABLE Mr. JUSTICE MOHAMMED SHAFFIQ

W.A.No.1420 of 2022
AND
C.M.P.No.9134 of 2022

East Coast Consultants (India) Limited
Rep. by its Director M.Jayaseelan
S/o.Muthu
HIG 35/G-3, Thiruvallur Nagar
3rd Avenue, Sea Shore Apartments
Thiruvanmiyur, Chennai 600 041

.. Appellant

Vs

1.The Deputy Commissioner of Income Tax
Central Circle-2(1)
1st Floor, Investigation Building
No.46 (Old No.108)
Mahatma Gandhi Road
Nungambakkam, Chennai 600 034

2.The Assistant Commissioner of Income Tax
DC/AC, Central Circle-1(2)
3rd Floor, Investigation Building
No.46 (Old No.108)
Mahatma Gandhi Road
Nungambakkam, Chennai 600 034



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3.The Principal Commissioner of Income Tax
Central-2

New Building, 3rd Floor
No.46 (Old No.108)
Mahatma Gandhi Road
Nungambakkam, Chennai 600 034

.. Respondents

Writ Appeal filed under Clause 15 of Letters Patent against the order dated 25.05.2022 passed by the learned Judge in W.P.No.10699 of 2022.

For Appellant Mr.M.P.Senthil Kumar

For Respondents Mr.A.P.Srinivas
Senior Panel Counsel

J U D G M E N T

[Judgment of the Court was delivered by R.MAHADEVAN, J.]

According to the appellant, they are engaged in the business of real estate. During the Financial Year 2007-08, they acquired a land situated at Siruseri admeasuring 65 cents for a sum of Rs.95,18,700/- through bank and during the Financial Year 2013-14 relevant to the assessment year 2014-15, the said property was sold to one Naveen Kochar by executing a general Power of Attorney dated 18.01.2003 for a total consideration of Rs.90,00,000/- which was received by cheques dated 31.08.2013 and 10.12.2013 for Rs.75,00,000/- and Rs.15,00,000/- respectively. The said Naveen Kochar thereafter, sold the

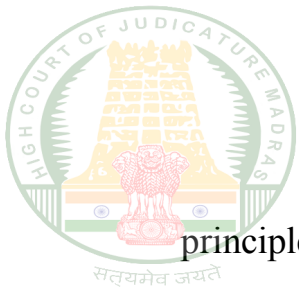


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said property to one M/s.Jacaranda Properties Pvt. Ltd. on 21.10.2013 for a total consideration of Rs.2,13,84,000/-, for which, the appellant neither had a part nor received a share. While so, a search was conducted under section 132 of the Income Tax Act, 1961, at the premises of the appellant on 03.09.2013. Subsequently, the assessee filed its return of income on 15.03.2016 admitting its total income at Rs.7,85,620/-, which was processed and the assessment was framed under section 144 r/w section 153A of the Act, on 12.08.2016 by the first respondent, by estimating the income of the appellant at Rs.1,21,98,250/-. Thereafter, the case was reopened and the re-assessment order under section 143(3) r/w section 147, was passed on 16.03.2022, determining the total income at Rs.1,99,63,250/-. Challenging the said order of assessment, the appellant filed W.P.No.10699 of 2022, which was dismissed by the learned Judge *vide* order dated 25.05.2022. Aggrieved against the same, the appellant/assessee has come up with this intra-court appeal.

2.The learned counsel for the appellant submitted that the second respondent, without issuing any show cause notice or asking for details relating to cost of acquisition of Siruseri property, has passed the assessment order dated 16.03.2022 by making addition of Rs.77,65,000/- and fastened the huge tax demand on them, which is arbitrary, illegal and in violation of the



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principles of natural justice. It is also submitted that the first respondent had no jurisdiction to reopen the assessment under section 148 of the Act, beyond the period of four years from the end of assessment year and therefore, the same is barred by limitation. Further, the second respondent failed to provide the reasons recorded for reopening the assessment and follow the mandatory procedure as laid down in the decision in **GKN Driveshafts v. ITO [(2003) 259 ITR 19 (SC)]**. Without considering these vital factors, the learned Judge erred in dismissing the writ petition, by granting liberty to the appellant to file statutory appeal before the authority concerned. Stating so, the learned counsel sought to allow this writ appeal by quashing the order impugned herein.

3.On the other hand, the learned senior panel counsel appearing for the respondents made his submissions to support the order passed by the learned Judge.

4.Heard the learned counsel for the appellant/assessee and the learned Senior Panel Counsel appearing for the respondents and also perused the materials available on record.

5.This intra-court appeal arises from the order of the learned Judge



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passed in the writ petition, which was filed by the appellant challenging the order of assessment passed by the second respondent. By the order impugned herein, the learned Judge has observed that the assessment order was passed based on the records that were available and furnished to the Income Tax Department to the assessee and hence, there was no merit to entertain the writ petition. Holding so, the learned Judge has directed the appellant to work out the remedy before the appellate authority by filing statutory appeal along with miscellaneous application to stay the recovery proceedings under section 220(6) of the Income Tax Act, 1961.

6.This court is of the view that the subject matter in issue involves factual matrix and the same cannot be decided by the writ court. Therefore, the learned Judge has rightly dismissed the writ petition and directed the appellant to file statutory appeal before the appellate authority, which does not require any interference.

7.At this stage, the learned counsel for the appellant sought to protect the interest of the appellant against the recovery proceedings, pursuant to the order of assessment passed by the 2nd respondent, placing reliance on the judgment of the Hon'ble Supreme Court in *Indus Towers Ltd. v. Assistant*



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Commissioner of Income Tax and another [(2022) 326 CTR (SC) 574],

wherein, it was held as under :

“In view of the fact that certain matters concerning the assessee are pending consideration before the CIT(A) and both sides are agreeable that the matters pending before the CIT(A) be taken to logical conclusion, liberty is given to the assessee as well as the Revenue to agitate all the issues before the CIT(A) in the pending appeals; pending said disposal, status quo shall be maintained by the parties.”

8.Considering the facts and circumstances of the case and as agreed by the learned counsel appearing for both sides, this court, without going into the merits of the case, issues the following directions, in the light of the aforesaid decision of the Hon'ble Supreme Court:

(i) The appellant / assessee is directed to pay 10% of the total demand within a period of eight weeks from the date of receipt of a copy of this judgment, failing which, it is open to the authority concerned to proceed further, in the manner known to law.

(ii) The time limit for filing a statutory appeal by the appellant / assessee, if not filed earlier, is 30 days from the date of receipt of a copy of this judgment.

(iii) On filing of such appeal and complying with the condition of payment, the appellate authority shall dispose of the appeal on merits and in accordance with law, after providing sufficient opportunity to the appellant / assessee enabling them to place their supportive materials as well as all the



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contentions, within a period of eight weeks, therefrom.

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9. With the foregoing directions, this writ appeal stands disposed of.

Consequently, connected miscellaneous petition is closed. No costs.

[R.M.D., J.]

[M.S.Q., J.]

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Index : Yes/No
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