

HC dismissed writ as alternate remedy was available to challenge issue regarding validity of reassessment notice

Summary – The High Court of Madras in a recent case of S. Balasubramanian Adityan, (the Assessee) held that issue as to whether notice for reassessment was issued within period of limitation could be raised in appeal; writ was not required.

ORDER

1. In W.P. No.13164/14, challenge is made to the notice dated 25.3.13, which calls upon the assessee intimating that the assessable tax of the year 2007-2008 has escaped assessment within the meaning of Section 147 of the Income Tax Act and, therefore, for the purpose of assessing/reassessing income/recomputed loss/depreciation allowance for the said assessment year, certain return in the prescribed form should be submitted within 30 days of the receipt of the notice.

2. Insofar as W.P. No.13163/14, the same challenges the assessment order of the year 2008-2009 stating that this assessment is irregular as the short term capital gains, which is the subject matter of the assessment year 2008-2009 on protective basis is not relatable to the transaction, because the transaction took place in the year 2007-2008.

3. The HC held that insofar as W.P. No.13164/14 is concerned, the plea of the learned counsel for the petitioner is that the notice dated 25.3.13, has been issued only on 9.4.14 and, therefore, the same is beyond limitation. Learned standing counsel for the respondent, however, states on instructions that the allegation made by the petitioner is denied. It is submitted that notice was issued in time, however, belatedly received by the petitioner. There is no fault on the part of the department.

4. The above issues can, however, be urged by way of a reply to the notice. If there is a response to the notice, the authority shall consider the same and pass orders thereon, on merits and in accordance with law. It is also made clear that the petitioners are entitled to make all legal pleas in response to the said notice. No further relief as sought for can be granted at this stage.

5. Insofar as W.P. No.13163/14 is concerned, learned standing counsel for the respondent contends that this assessment is a protective assessment. In the course of enquiry, the statement made by the petitioners is that the sale transaction took place in the year 2007-2008. The department, however, doubted the said stand. Therefore, the assessment made is a protective assessment to find out the

taxable nature of the transaction be it 2007-2008 or 2008-2009. In any event the assessment order 2008-2009 is appealable.

6. In such view of the matter, the assessment order can be assailed in appeal. Therefore, the petitioners have not made out a case for invoking the extraordinary jurisdiction of this court under Article 226 of Constitution of India bypassing the effective alternative remedy.

7. In view of the reasons aforesaid, both the writ petitions fail and, accordingly, they are dismissed. Consequently, connected miscellaneous petitions are closed. However, there shall be no order as to costs.

8. Learned senior counsel for the petitioners, however, sought for thirty days time to file the appeal before the authority. The said request of the petitioners is granted. Petitioners are permitted to file appeal before the authority concerned within thirty days from the date of receipt of a copy of this order. Office is directed to return the original order impugned on furnishing a photocopy duly authenticated.