IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **03.02.2017**

CORAM

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

W.P.No.**9636 of 2003**

K.Raja Guru .. Petitioner

Vs.

1. The Commissioner of Income Tax-I,
   Madurai
   No.2, V.P.Rathina Samy Nadar Road
   Madurai 625 002

2. The Additional Commissioner of Income Tax
   Range II, Madurai
   Madurai 625 002

3. The Assistant Commissioner of Income Tax
   Circle II, Madurai
   Madurai 625 002 .. Respondents

Petition filed under Article 226 of The Constitution of India, praying for the issuance of a Writ of Certiorari, calling for the records of the 3rd respondent in P.A.No.R-7141/CIR-I/MDU dated 31.12.2002 and quash the same.

For Petitioner	..	No appearance
For Respondents	..	Mr.M.Swaminathan

ORDER

The Assistant Commissioner of Income Tax, Circle II, Madurai issued a show cause notice dated 31.12.2002 to the petitioner stating that the Assessing Officer has reason to believe that the petitioner has had taxable income for the assessment year 1996-1997 and therefore, by the impugned order, had called upon the petitioner to show cause within 30 days from the date of receipt of the notice as to why assessment order should not be passed. The petitioner received the show cause notice dated 31.12.2002 and has filed the present writ petition alleging that the same has been issued beyond the period of limitation.

2. Along with the main writ petition, in W.P.M.P.No.12244 of 2003, the petitioner had made the following prayer:

> "This Hon'ble Court may be pleased to grant an order of ad-interim injunction restraining the 3rd respondent, their men, agents, servants, employees or any other person claiming through or under them from in any manner acting upon the impugned notice P.A.No.R-7141/CIR-II/MDU dated 31.12.2002 pending disposal of the above writ petition."

3. On 27.3.2013, when the writ petition came up for admission, this Court passed the following order in WPMP No.12244 of 2003:

"Matter shall be listed on 10.4.2003 to enable the counsel for respondents to obtain instruction. Interim injunction till 10.4.2003."

Thereafter, on 10.4.2003, this Court passed the following order:

"Learned counsel for the revenue submits that the assessment has been completed before notice in the interim petition was received by them.

Further proceedings pursuant to the assessment shall be kept in abeyance until the department files counter and orders are finally passed. Notice

Post after vacation.

On 25.8.2003, this Court passed the following order:

"Interim order granted on 10.4.2003 is made absolute"

On 25.1.2017, this Court passed the following order:

"The petitioner K.Raja Guru filed this writ petition through Advocate Mr.T.R.Senthil Kumar. During the pendency of this writ petition, Mr.T.R.Senthil Kumar was appointed as Senior Standing Counsel for Income Tax Department and therefore he sent a communication dated 10.1.2017 by Registered Post with Acknowledgment due to the last known residence of K.Raja Guru, but an envelope had returned unserved on the ground that "no such addressee". Mr.Senthil Kumar filed a memo dated 19.1.2017, narrating the aforesaid facts and also enclosing a copy of the communication dated 10.1.2017 together with photocopies of the returned envelope.

2. In the affidavit sworn to by Mr.K.Raja Guru, he has given his address as "H-14, Ellis Nagar, Madurai - 625 016". Mr.Senthil Kumar, Advocate, has sent the communication dated 10.1.2017 to the very same address, but the same has been returned to the sendor as stated above. Mr.Senthil Kumar stated that he does not have any other address of the petitioner. It is the duty of the client to keep in touch with his advocate and keep him informed of any change of address and also to know about the development in this case.

3. On the direction of this Court, the name of K.Raja Guru/petitioner was printed in the cause list on 19.1.2017 and 25.1.2017. Though the name of Raja Guru has been printed in the cause list, there is no appearance. Therefore, this Court proceeded to peruse the records and hear Mrs.Pushpa, learned Standing Counsel for Income Tax Department.

4. Mrs.Puspha, learned Standing Counsel for Income tax Department submitted that even before this Court had granted interim orders in this writ petition, the authorities have completed assessment proceedings and therefore, this writ petition has become infructuous. She also submitted that she would produce a copy of the assessment order before this Court on the next hearing date.

5. Recording the above submission, the matter is adjourned to **2.2.2017** for orders at the top of the list.

4. Today, when the writ petition came up for hearing, Mr.M.Swaminathan, learned Standing counsel for the Income Tax fairly

submitted that the Department was not able to ascertain as to when the assessment order was passed. However, he brought to the notice of this Court the order dated 27.2.2007 passed by a Division Bench of this Court in W.P.No.9686 of 2003 on a similar writ petition filed by one K.Jeyaraj, who is brother of the present petitioner. In W.P.No.9686 of 2003,. this Court passed the following order:

> "3. Concededly, the petitioner challenges the notices under sections 148 and 143(2) of the Income Tax Act. Though the petitioner raised several grounds including the question of limitation, it is seen from the counter affidavit filed by the 3rd respondent that the assessment relating to the petitioner was completed and demand notice was issued to the petitioner. Though the petitioner obtained interim orders, it is seen from the counter affidavit that before the receipt of orders of this Court granting interim stay, the demand notice was issued. In view of the statement made in the counter affidavit that the assessment was completed and demand notice was issued, this writ petition filed challenging the notices has become infructuous."

5. Under ordinary circumstances, this Court would have followed the order dated 27.2.2007 passed in W.P.No.9686 of 2003, but in the absence of the Department, informing this Court as to when the actual assessment was passed, this court is not able to follow the Division Bench order. However, against the assessment order, the assessee is entitled to file an

appeal before the Commissioner of Income Tax under section 246 of the Income Tax Act. Against the order of the Commissioner, the assessee can also file a further appeal before the Income Tax Appellate Tribunal under section 252 of the Income Tax Act. In the light of the aforesaid remedies available to the petitioner, the challenge to the show cause notice is unfounded.

6. In the result, this writ petition is dismissed with the following directions:

> "The Department is directed to serve the assessment order on the petitioner within one month from the date of receipt of a copy of this order so as to enable the petitioner to file an appeal before the appellate authority. If the assessment order has not been already passed, the Department is directed to pass an assessment order, after giving an opportunity to the assessee, within six months from the date of receipt of a copy of this order."

No costs.

03.02.2017

Index:Yes/No
ajr

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P.N.PRAKASH, J.

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