In the High Court of Judicature at Madras

Dated: 22.02.2017

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The Honourable **Mr.JUSTICE RAJIV SHAKDHER**

Writ Petition No.4439 of 2017
and WMP No.4646 of 2017

N.Chandrasekaran

.... Petitioner

Vs

1. The Deputy Commissioner of Income Tax, Corporate Circle - 2, Coimbatore.

2. The Assistant Commissioner of Income Tax, Corporate Circle - 2, Coimbatore.

3. The Commissioner of Income Tax (Appeals)-I, Office of the Commissioner of Income Tax, Race Course Road, Coimbatore.

.... Respondents

PETITIONs filed under Article 226 of the Constitution of India praying for the issuance of writ of certiorarified mandamus to call for the records of order dated 10.2.2017 vide proceedings in P.A.No.ABCPN8185G/Corp.Cir.2/2015-16 on the file of 2nd respondent and quash the same and consequently forbearing the respondents authorities from any manner demanding the petitioner to pay the disputed amount of tax for the financial year 2013 to 2014 with respect to Assessment order dated 29.3.2016 on the file of 1st respondent bearing PAN No.ABCPN8185G till the final disposal of the appeal, which is pending before the 3rd respondent.

For Petitioner : Mr.K.Myilsamy
For Respondents: Mr.T.Pramod Kumar Chopda

ORDER

1. Issue notice. Mr.T.Pramod Kumar Chopda, accepts notice on behalf of the respondents.

1.1. With the consent of counsels for parties, the Writ Petition is taken up for final hearing and disposal.

2. By virtue of this Writ Petition, challenge is laid to the notice of demand dated 10.02.2017.

2.1. By virtue of the impugned notice, the petitioner has been called upon to pay the outstanding demand, with respect to the Assessment Years (A.Y.s) 2013-14 and 2007-08.

2.2. In so far as the A.Y.2013-14 is concerned, the petitioner has been called upon to pay a sum of Rs.73,01,131/-, while, in respect of A.Y.2007-08, a demand in the sum of Rs.19,390/- has been raised against the petitioner.

3. Counsel for the petitioner says that the petitioner had approached this Court earlier, by way of a Writ Petition, which was disposed of, by order dated 07.09.2016. It is stated that the said Writ Petition was numbered as W.P.No.31070 of 2016.

3.1. Learned counsel says that in the operative part of that order, this Court had directed the petitioner to prefer a stay petition before respondent No.1, within a period of two (2) weeks from the date of receipt of a copy of that order and that, till such time the stay petition was disposed of, no coercive action would be taken against the petitioner, pursuant to the assessment order dated 29.03.2016.

3.2. Furthermore, counsel for the petitioner says that, an appeal has been preferred against the assessment order dated 29.03.2016, which is pending consideration with respondent No.3.

3.3. Learned counsel says that, without disposing of, either the stay petition, which is pending before respondent No.1 or, the appeal, which is pending consideration with respondent No.3, the impugned notice has been issued.

4. Mr.Chopda, who appears on behalf of the Revenue, says that, these facts could have been brought to the notice of the concerned authority, which had issued the impugned notice.

4.1. In any event, Mr.Chopda says, that given the circumstances set out above, the stay petition will be disposed of, at the earliest, in line with the directions of this Court, contained in the order dated 07.09.2016, passed in W.P.No.31070 of 2016.

4.2. Furthermore, Mr.Chopda says that the earlier order of this

Court dated 07.09.2016, passed in W.P.No.31070 of 2016, pertains only to A.Y.2013-2014 and not to A.Y.2007-08.

5. I may indicate herein that the counsel for the petitioner says that no assessment order has been passed with respect to the A.Y.2007-08.

6. Therefore, having regard to the record placed before me and the submissions of the counsels, I am inclined to dispose of the Writ Petition with the following directions:

6.1. First, the impugned order dated 10.02.2017, shall not be enforced, by way of attachment of assets or otherwise against the petitioner, till such time the stay petition of the petitioner, pending before respondent No.1, is disposed of. I am told that respondent No.2 is the concerned authority, who would have to deal with the stay petition. Therefore, if, need arises, the petitioner will file a fresh stay petition with respondent No.2.

6.2. Second, respondent No.2 will dispose of the stay petition in line with the directions contained in the order dated 07.09.2016, passed in W.P.No.31070 of 2016

6.3. Third, in so far as A.Y.2007-08 is concerned, the petitioner will, immediately, make a written representation to the concerned authority, which issued the impugned notice, bringing to its knowledge, the submission, which is sought to be canvassed before me, that is, that no assessment order has been passed for the said assessment year and, therefore, a demand could not have been raised in anticipation of an assessment proceeding.

6.4. Lastly, upon receiving such a representation, as indicated in paragraph 6.3 above, the concerned Authority, will pass a speaking order with respect of A.Y.2007-08.

7. The Writ Petition, is, accordingly, disposed of in line with the directions set out above. Consequently, the connected Miscellaneous Petition is closed. However, there shall be no order as to costs.

Index : Yes/No 22.02.2017
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Note: Issue order copy on or before 23.02.2017.

To

1. The Deputy Commissioner of Income Tax,
   Corporate Circle - 2, Coimbatore.

2. The Assistant Commissioner of Income Tax,
   Corporate Circle - 2, Coimbatore.

3. The Commissioner of Income Tax (Appeals)-I,
   Office of the Commissioner of Income Tax,
   Race Course Road, Coimbatore.

RAJIV SHAKDHER,J.

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