IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 03.11.2016
Coram

The Hon'ble Mr.Justice T.S.Sivagnanam

Writ Petition No.38268 of 2016

and

W.M.P.No.32813 of 2016

Mr. M.Radhakrishnan ...Petitioner

Vs

1. The Income Tax Officer,
Ward 2 (3), O/o.The Joint Commissioner of
Income Tax,
Range 2, No.15, Gandhiji Road,
Erode, Tamil Nadu 638 001.

2. The Assistant Commissioner of Income Tax,
Circle II, Erode.

3. The Principal Commissioner of Income Tax (II)
67-A, Race Course Road,
Coimbatore. ...Respondents

Writ Petition, filed under Article 226 of the Constitution of India, for issuance of Writ of Certiorarified Mandamus to call for records relating to the show cause notice issued by the first respondent, dated 25.10.2016, in

PAN : AJLPR2812D/W-2(3)/ERD/Prosecution/2016-17, and to quash the same, and consequently, to forbear the respondent from initiating any proceedings for prosecution against the petitioner in respect of the Assessment Year 2009-10.

For Petitioner : Mr.Niranjan Rajagopalan

For Respondents : Mr.T.Pramod Kumar Chopda
Senior Panel Counsel

ORDER

Heard Mr.Niranjan Rajagopalan, learned counsel appearing on behalf of the petitioner, and Mr.T.Pramod Kumar Chopda, learned Senior Panel Counsel for Central Government, accepting notice on behalf of respondents. With the consent on either side, the Writ Petition itself is taken up for final disposal.

2. The petitioner has filed this Writ Petition, challenging the Show Cause Notice issued by the first respondent, dated 25.10.2016, calling upon the petitioner to appear before him on 02.11.2016, and show cause as to why the petitioner's case should not be referred to the Principal Commissioner of

Income Tax, for initiation of prosecution/proceedings under Section 276 C (1) of the Income Tax Act, 1961 (hereinafter, referred to as 'the Act') on the alleged ground that the petitioner has willfully attempted to evade tax and interest chargeable, and penalty imposable under the Act.

3. As rightly pointed out by the learned Senior Panel Counsel, the impugned Order is only a Show Cause Notice, to which, the petitioner can very well appear before the first respondent and show cause as to why the proposals made in the Show Cause Notice should not be implemented/confirmed.

4. The learned counsel appearing on behalf of the petitioner would submit that the petitioner has got certain legal submissions to make, as to the jurisdiction of the respondent in proposing to initiate prosecution in the facts of the case.

5. The learned counsel for the petitioner would further submit that, as against the Assessment Order, the petitioner had preferred Appeal before the Income Tax Appellate Tribunal (ITAT), and the same was allowed by the

ITAT, however, on a Cross-Appeal filed by the Revenue, the order was recalled by the ITAT, and the Appeal of the Revenue was dismissed and against both orders, the petitioner has filed two Tax Case Appeals before the Hon'ble Division Bench of this Court, out of which, one Appeal has been numbered as T.C.A.No.784 of 2016, in which, an application for stay has been filed and the other Appeal is in the process of numbering, as the Registry has raised certain objections as to its maintainability.

6. However, in the considered view of this Court, the impugned proceedings, being only a Show Cause Notice, it cannot be interdicted at this stage, and whatever points, the petitioner wants to raise, can very well raised before the first respondent, by responding to the Show Cause Notice. Therefore, the prayer sought for in this Writ Petition to quash the impugned Show Cause Notice is rejected.

7. In the result, the Writ Petition is dismissed. The petitioner is directed to appear before the first respondent on 10th November, 2016, and submit their reply to the Show Cause Notice. As an Interim Protection, till 10.11.2016, the first respondent shall not take any coercive action against the

petitioner. No costs. Consequently, connected Writ Miscellaneous Petition is closed.

03.11.2016

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Index : yes/no

Note : Issue Order Copy on 04.11.2016

To

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<u>T.S.Sivagnanam, J.</u>

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