IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.06.2016

Date of Reserving the Order	*Date of Pronouncing the Order*
21.06.2016	**23.06.2016**

Coram

The Hon'ble Mr. Justice **T.S. SIVAGNANAM**

W.P.Nos.11225 & 11226 of 2016

D.Ramagopal ... Petitioner in W.P.No.11225 of 2016

S.Jayanthi Shri ... Petitioner in W.P.No.11226 of 2016

Vs

1.Ms.Kalpalatha Rajan I.R.S.,
The Asst., Commissioner of Income Tax
Central Circle-I, Coimbatore,
63, Race Course Road,
Coimbatore -18.

2.K.Jeyaganesh I.R.S.,
Deputy Director of Income Tax (Inv) Unit-I,
67-A, Race Course Road,
Coimbatore – 18.

3.The Commissioner of Income Tax,
63, Race Course Road,
Coimbatore – 18. ... Respondents in all W.Ps.

Prayer :- This Writ Petition is filed under Article 226 of the Constitution of India, seeking for a Writ of Mandamus to direct the third respondent, the Commissioner of Income Tax, Coimbatore-18 to withdraw the Income Tax Assessment Proceedings of the petitioners, D.Ramagopal-PAN AKGPR3621L, S.Jayanthi Shri PAN:AIQPJ9025N for the Assessment Years 2008-09 to 2014-15, from the file of Ms.Kalpalatha Rajan, I.R.S., the Assistant Commissioner of Income Tax, Central Circle-I, Coimbatore and K.Jeyaganesh, I.R.S., Deputy Director of Income Tax, Central Circle-I, Coimbatore, the respondents 1 and 2 respectively including the inquiry and investigation and entrust these jobs with any other officers of the same cadre to commence and complete the proceedings by issuing a Writ of Mandamus or any other order or direction.

For petitioners .. Dr.A.E.Chelliah Senior counsel for
Mr.K.Ramanujam and
A.Mohammed Sathick

For Respondents .. Mr.T.Pramodkumar Chopda

COMMON ORDER

Heard Dr.A.E.Chelliah, learned Senior counsel assisted by Mr.K.Ramanujam, and A.Mohammed Sathick, learned counsels for the petitioner and Mr.T.Pramodkumar Chopda, learned counsel for the respondent and with consent on either side, the Writ Petitions are taken up for final disposal.

2. The petitioner in W.P.No.11225 of 2016 is Sri.D.Ramagopal, who is husband of the petitioner in W.P.No.11226 of 2016 and in both these Writ Petitions, the petitioners seek for identical relief wherein prayer has been made for issuance of a Writ of Mandamus to direct the third respondent, the Commissioner of Income Tax, to withdraw the Income Tax Assessment proceedings of the petitioners from the file of the first respondent and the second respondent including the inquiry and investigation and entrust the same to any other officer of the same cadre to commence and complete the proceedings.

3. Thus, infact what the petitioner seek for is to transfer the assessment files of the petitioners from the first respondent and entrust the same to some other officer. The power of transfer cases under the Income Tax Act is in terms of Section 127. By virtue of power under sub-section (1) of Section 127 of the Income Tax Act, the Director General or Chief Commissioner or Commissioner may after giving the assessee a reasonable opportunity of being heard in the matter, wherever it is possible to do so, and after recording his reasons for doing so, transfer any case from one or more Assessing

Officer subordinate to him whether with or without concurrent jurisdiction to any other Assessing Officer or Assessing Officers whether with or without concurrent jurisdiction and also subordinate to him. Sub-section (2) of Section 127, contemplates situation where the Assessing Officer or Assessing Officers from whom the case is to be transferred and the Assessing Officer or the Assessing Officers to whom, it is to be transferred are not subordinate to the same Director General or Chief Commissioner or Commissioner of Income Tax. Sub-section (3) states that nothing in Sub-section (1) and Sub-section (2) of Section 127 of the Income Tax Act, shall be deemed to require any such opportunity to be given where the transfer is from an Assessing Officer to any other Assessing Officers situated in the same city or locality and in terms of sub-section (4), transfer can be made at any stage and shall not render necessary the reissue of any notice.

4. In the case of ***Autofin Ltd., vs. Commissioner of Income Tax*** reported in ***1977 (106) ITR 638,*** the Andhra Pradesh High Court held that the assessee could move the Commissioner or the Board for transfer of his case and there is no reason as to why the power should be exercised only suo-moto and not on the application of the assessee. The said decision was relied upon by this Court in the case of

Ms.D.V.Mercy & Anr., vs. The Income Tax Officer, Ward I (2), Thanjavur & Ors., in W.P. No.1576 of 2014, dated 14.10.2014. Thus, in terms of the aforementioned decisions, the assessee could also seek for transfer, provided, he files an application before the Commissioner of Income Tax under Section 127 of the Income Tax Act. From the documents placed before this Court in the form of typed set of papers and additional typed set of papers, it is seen that the petitioners have not moved the Commissioner requesting for transfer of the case. In such circumstances, without even a demand or a request to the third respondent to exercise the statutory power, a Writ of Mandamus as sought for cannot be issued, as a request is a necessary concomitant before approaching this Court by way of a Writ Petition, more particularly in the facts and circumstances of this case. Therefore, on this sole ground itself, the Writ Petitions are liable to be rejected.

5. Nevertheless, since I heard the learned Senior counsel for the petitioner elaborately for substantial length of time as well as the learned Standing counsel for the department and perused the material papers placed before the Court, I proceed to consider the other contentions as well. The first respondent is the Assessing Officer, who has been impleaded in her personal capacity, so also the second

respondent who appears to have been an Officer, who was earlier working in the said station in the capacity of the Deputy Director of Income Tax, has also been roped in this litigation and impleaded in his personal capacity.

6. The learned counsel for the petitioner submitted that the petitioner has been unreasonably and unnecessarily harassed by the first respondent and submitted that the petitioner is a law abiding citizen and referred to the order passed by the Special Court under TNPID Act, which recorded that the petitioner had repaid all the depositors to the tune of Rs.18,27,250/- which will go to show that the petitioner had been promptly settling the deposits. Further, it is submitted that the entire proceedings had been initiated by the first respondent by relying upon a fax message alleged to have been sent by one Mr.P.R.Balakrishnan to the second respondent. It is submitted that inspite of repeated requests, the copy of the fax message was not furnished to the petitioner and when it was ultimately given, it was found to be a bogus document, the signature was fabricated and based on such document, proceedings have been initiated to harass the petitioners. The learned counsel further submitted that the said P.R.Balakrishnan is not traceable and this is evident from the other

orders passed by this Court in collateral proceedings at the instance of the petitioner Sri.D.Ramgopal and one Sri.R.Viswanathan and the Police authorities filed a counter affidavit stating that his whereabouts or not known, apart from that the Tahsildar as well as the Village Administrative Officer have certified that there is no such person residing in the said village area and inspite of producing all these records, the first respondent has been harassing the petitioner to produce the said P.R.Balakrishnan for inquiry, which is virtually impossible. Apart from that, the learned counsel submitted that the first respondent discarded the documents produced by the petitioner and uttered certain derogative remarks in local Tamil slang and therefore, taking into consideration all the factual circumstances, the case ought to be transferred to some other officer by the third respondent.

7. The learned Standing counsel for the respondent pointed out that sofar as the petitioner in W.P.No.11226 of 2016 is concerned even at the time when the Writ Petition was filed, the order of assessment had already been passed and communicated to the petitioner. Insofar as the petitioner in W.P.No.11225 of 2016 is concerned, it was reported to this Court that the hearing is already over and orders are

to be passed by the respondent. These aspects have been recorded by this Court while passing an order on 28.03.2016, which is to the following effect:-

Mr.T.Pramod Kumar Chopda, learned Standing Counsel appearing for the Commissioner of Income Tax/third respondent, submitted that

(i). in respect of the petitioner, in W.P.No.11226 of 2016, the first respondent had completed the proceedings and also passed an order of assessment and the same was also despatched to the petitioner.

(ii). in respect of the petitioner in W.P.No.11225 of 2016, the learned Standing Counsel submitted that the petitioner had appeared before the first respondent, on 18/3/2016 and the proceeding was also completed.

2. Further, the learned Standing Counsel submitted that the first respondent is not going to call the petitioner, in W.P.No.11225 of 2016, again for enquiry.

3. The submissions made by the learned Standing Counsel appearing for the third respondent is recorded and three weeks' time is granted for filing counter.

4. Notice to the respondents 1 and 2 returnable in three weeks. Private notice is also permitted.

8. It is submitted that the orders have been passed by following the procedure as stipulated under the Act and the allegations made by the petitioner are absolutely false. In this regard, the learned counsel referred to the counter affidavits filed by the respondents 1 and 2.

9. After hearing the learned counsel appearing for the parties and perusing the materials placed on record, two factors are to be taken note of before considering as to whether the prayer sought for by the petitioners could be acceded. The first is that the petitioner has sought for a direction to transfer their cases pertaining to the assessment proceedings for the assessment years 2008-09 to 2014-15 to some other officer inspite of the first respondent. However, the fact remains, the first respondent has concluded the proceedings and passed an order of assessment, which has been communicated to the petitioners and the petitioners have filed appeals before the Commissioner of Income Tax (Appeals) on 21.04.2016. Thus, the assessment proceedings having already been concluded and the petitioners having received the copies of the assessment orders and filed appeals against such orders, the question of issuing a direction to transfer the case cannot be considered.

10. The second aspect which has to be seen is whether the petitioner's contention that the letter dated 19.02.2014, sent by P.R.Balakrishnan is a genuine document or a false and fabricated document, has to be examined at this juncture. On a perusal of the grounds of appeal filed by the petitioner before the Appellate Authority against the assessment order, the petitioner has raised a ground stating that the Assessing Officer erred in relying upon a bogus fax and letter which has no evidenciary value. Thus, the petitioners having raised this issue before the appellate authority as one of the grounds of challenge to the assessment order, this issue need not be decided in this Writ Petition in the light of the prayer sought for.

11. With regard to the allegations made by the petitioners against the first and second respondent, this Court after considering the affidavits filed by the Writ Petitioners, the counter affidavits filed by the respondents 2 and 3 as well as rejoinder affidavit, finds that the allegations are frivolous and there is no substantial proof to establish any *malafide* intention on the part of the respondents 1 and 2. While on this issue, it would be relevant to point out that the petitioners had been cooperating in the assessment proceedings by appearing before

the first respondent on 12.10.2015, 25.01.2016, 03.03.2016, 05.03.2016, 08.03.2016, 10.03.2016, 16.03.2016 and 18.03.2016. Thus, from October 2015 to middle of March 2016, the petitioners were cooperating in the assessment proceedings and appearing on all dates of hearing. For the first time, the petitioners have raised such an objection by approaching this Court and filing these Writ Petitions on 23.03.2016. The petitioners have not given any complaint to the third respondent about alleged harassment or *malafide* action. Thus, it is evident that the present Writ Petitions are only an attempt to thwart the assessment proceedings, especially when, the assessment beyond 31.03.2016, would become time barred. The Assessing Officer has concluded the hearing on 18.03.2016 and passed the assessment order on 30.03.2016, which is subject matter of challenge before the appellate authority. Therefore, it is one more reason to reject the relief sought for in this Writ Petitions.

12. The learned Senior counsel for the petitioner vehemently contended that the assessment order was not passed in the case of petitioner in W.P.No.11226 of 2016 on 22.03.2016 and it is wrong to state that it was despatched. To establish the same, the learned Standing counsel for the respondent produced the copies of the screen

shots on the assessment proceedings which clearly shows that the assessment order was passed on 22.03.2016, to establish that it was despatched on 24.03.2016, copy of the postal cover has been produced, from which, it is seen that the cover was sent by speed post on 24.03.2016 to the address of the assessee at No.14A, 10th Street, Ganapathypudur, Ganapathy, Coimbatore – 641 006. The said letter has been re-directed to No.116A, West Bashiyam Road, R.S.Puram, Coimbatore. The cover has gone to redirected address and returned to the sender (office of the first respondent) with postal endorsement 'insufficient address', “no such person R.Jayanthi Sri at the above office (R.S.Puram)”. This has been received by the office of the first respondent on 28.03.2016 and once again, sent by speed post on 28.03.2016 and received by the petitioner on 30.03.2016. The re-direction of the postal cover is not at the instance of the respondent department, but at the point, where the cover reached the address initially given. Therefore, the petitioner is under the mistaken impression that the cover has been re-directed by the Department. Thus, it is clear that the statement made by the learned Standing counsel on instruction from the department before this Court on 28.03.2016, is correct.

14. The learned Senior counsel for the petitioner submitted that when the Writ Petitions were pending before this Court in a hurried manner, the first respondent has passed an order of attachment on 24.03.2016. It is seen from the record of the proceedings that this Court heard the matter on 28.03.2016 and passed the above mentioned order. From the said order, it is clear that there was no prohibitory order prohibiting the department from proceeding further in accordance with the provisions of the Act. Therefore, it cannot be inferred that the order of attachment was passed in a hurried manner or for certain other collateral purpose. Further, the third respondent was functioning as a Deputy Director of Income Investigation for the period from 17.06.2013 to 18.07.2014 and thereafter, he has been transferred and posted as a Deputy Commissioner of Income Tax, Corporate circle-6(2), Chennai. The assessment proceedings were carried on by the first respondent and the hearings commenced only on 12.10.2015, much after the second respondent was transferred from Coimbatore i.e., on 18.07.2014. In fact, even on the date when the notice was issued under Section 142(1) of the Act on 26.12.2014, the second respondent was not functioning at Coimbatore.

15. Hence, for all the above reasons, the petitioners have not made out any case for granting the relief sought for. Accordingly, the Writ Petitions fail and they are dismissed. No costs. Consequently, connected Miscellaneous Petitions are closed.

23.06.2016

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Index :Yes/No
Internet :Yes/No

To

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The Asst., Commissioner of Income Tax
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63, Race Course Road,
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Deputy Director of Income Tax (Inv) Unit-I,
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3.The Commissioner of Income Tax,
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Coimbatore – 18.

T.S.SIVAGNANAM, J.
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Pre-Delivery O r d e r in
W.P.No.11225 of 2016

23.06.2016