

IN THE HIGH COURT OF JUDICATURE AT MADRAS  
DATE: 16-08-2012

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THE HONOURABLE MR.JUSTICE M.JAICHANDREN

Writ Petition No.22039 of 2012 and  
M.P.Nos.1 and 2 of 2012

Mr.P.Hariharan  
Versus

.. Petitioner.

1. The Commissioner of Income Tax  
Chennai-X, New Bock, VI Floor,  
121, Mahatama Gandhi Road,  
Chennai-600 034.

2. The Income Tax Officer  
Ward-XIII(3), Room No.605,  
New Block, VI Floor,  
121,Nungambakkam High Road,  
Chennai-34.

3. Commissioner of Income Tax (Appeals-XII),  
No.121, Mahatama Gandhi Road,  
Chennai-34.

.. Respondents.

Prayer: Petition filed under Article 226 of the Constitution of India, seeking for a Writ of Certiorarified Mandamus, calling for the records of the first respondent in C.No.10130/Stay/CIT-X/2011-12 relating to the application made by the petitioner for stay of demand under Section 220(6) of the stay of demand under Section 220(6) of the Income Tax Act, 1961, and quash the impugned order, dated 16.3.2012, rejecting the stay petition and direct the first respondent to grant stay of demand relating to the assessment order for the assessment year 2009-10, pending disposal of the appeal before the third respondent.

For Petitioner : Mr.R.Sivaraman

For Respondents : Mr.T.Pramod Kumar Chopra

O R D E R

Heard the learned counsel appearing for the petitioner, as well as the learned counsel appearing on behalf of the respondents.

2. It has been stated that the petitioner had filed the return of income, for the assessment year 2009-2010, on 9.11.2010, admitting a total income of Rs.1040/- and it had been processed, under Section 143(1) of Income Tax Act, 1961. Subsequently, the case of the petitioner was selected for scrutiny, under the computer assisted scrutiny system, and a notice had been issued, under Section 143(2) of the said Act.

3. It has been further stated that, during the previous assessment year, the petitioner had sold his family property, in Akkinampattu Village, Palur Post, Chiyyur Taluk, Kanchipuram District and had received his share of Rs.49,89,450/-, out of the sale proceeds. The property which had been sold was agricultural land. The petitioner had invested a sum of Rs.26,74,800/- towards the purchase of residential house plots, in Kancheepuram District. A certificate had been obtained from the Village Administrative Officer concerned stating that the property in question was agricultural land. However, the second respondent, without considering the certificate issued by the Village Administrative Officer and the other evidence placed before him, had completed the assessment, under Section 143(3) of the Income Tax Act, 1961, raising a demand of Rs.49,52,600/-, by his order, dated 26.12.2011, assessing the total income at Rs.1,48,18,510/-. Aggrieved by the said assessment order the petitioner had preferred a statutory appeal before the Commissioner of Income Tax (Appeals), the third respondent herein, on 23.1.2012, and it is still pending on the file of the third respondent.

4. It has been further stated that the petitioner had also filed a petition, under Section 220(6) of the Income Tax Act, 1961, before the second respondent, on 23.1.2012, to keep the demand of tax in abeyance and requesting him not to treat the petitioner as an assessee in default. However, the second respondent had rejected the petition filed by the petitioner, by his order, dated 17.2.2012, and had directed the petitioner to pay 50% of the outstanding demand, arbitrarily, without having sufficient reasons to pass such an order. In support of his contention the learned counsel appearing on behalf of the petitioner had relied on the decision, reported in *Soul Vs. Deputy Commissioner of Income Tax* [2010] 323 ITR 305.

5. At this stage of the hearing of the writ petition the learned counsel appearing on behalf of the petitioner had submitted that his bank account in the State Bank of India, Anna Nagar Branch, bearing Account No.10299780299, had been attached, pursuant to the assessment order passed by the second respondent, dated 26.12.2011. He had also submitted that some of the properties belonging to the petitioner, bearing Plot Nos.44, 45 and 46, in Anandham Royal City-Phase-I, Nattarasanpattu Village, Sriperumbudur Taluk, Kancheepuram District, had also been attached, pursuant to the assessment order, dated 26.12.2011. Since, the value of the properties already attached, belonging to the petitioner, would be more than sufficient to meet the demand of tax. As such, the respondent Department stands sufficiently protected, in respect of the demand of tax, said to be payable by the petitioner.

6. The learned counsel appearing on behalf of the respondents had submitted that the petitioner had not satisfied the conditions stipulated, under Section 54B of the Income Tax Act, 1961, pertaining to capital gains, arising out of the sale of agricultural lands. He had also submitted that the petitioner had received the sale consideration, in respect of the lands sold and he had earned capital gains of Rs.1,48,18,510/- and therefore, he is not entitled to plead financial hardship, while praying for an order of interim stay of the assessment order, dated 26.12.2011.

7. In view of the submissions made on behalf of the learned counsels appearing on behalf of the parties concerned and on a perusal of the records available, it is noted that the bank account of the petitioner, bearing Account No.10299780299, in the State Bank of India, Anna Nagar Branch, had been attached and certain immovable properties belonging to the petitioner bearing Plot Nos.44, 45 and 46, in Anandham Royal City-Phase-I, Nattarasampattu Village, Sriperumbudur Taluk, Kancheepuram District, had also been attached, pursuant to the said assessment order, dated 26.12.2011, relating to the assessment year 2009-2010. As it is found that the value of the immovable properties attached by the respondent Department would, substantially, cover the tax demand made against the petitioner, this Court finds it appropriate to direct the third respondent to dispose of the appeal filed by the petitioner, on merits and in accordance with law, within a period of four weeks from the date of receipt of a copy of this order. It is also made clear that, till final orders are passed in the appeal pending on the file of the third respondent, no recovery proceedings shall be initiated against the petitioner, by the respondents, pursuant to the assessment order, dated 26.12.2011. The writ petition is ordered accordingly. No costs. Consequently connected miscellaneous petitions are closed.

Index:Yes/No 16-08-2012

Internet:Yes/No

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To

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M.JAICHANDREN,J.

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