**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

**DATED : 15.02.2021**

**CORAM**

**THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN**

**W.P(MD)Nos.1299, 1302 and 1433 of 2021**
**and**
**W.M.P.(MD)Nos.1089, 1090 and 1224 of 2021**

K.S.Santhosh Kumar ... Petitioner in all W.Ps

**Vs.**

1.The Income Tax Officer,
Ward I (1),
No.130, Railway Feeder Road,
Virudhunagar - 626 001.

2.The Tax Recovery Officer-2,
No.2, V.P.Rathinasamy Nadar Road,
Bibikulam, Madurai – 625 002. ... Respondents in all W.Ps

**Prayer in W.P.(MD)No.1299 of 2021** : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, to call for the records on the file of the second respondent in impugned proclamation of sale in C.No.TRC/943 to 946/TRO/MDU/2019-20, dated 27.02.2020, quash the same as illegal and improper and direct the respondents to treat the petitioner as not being in default of payment of income tax till the disposal of the appeal to be filed under the provisions of the Income Tax Act, 1961.

**Prayer in W.P.(MD)No.1302 of 2021** : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, to call for the records on the file of the first respondent in impugned order in AAFFD5475M/W1/VNR/2019-20 dated 04.02.2020 (served to the petitioner on 21.03.2020), quash the same as illegal and improper and direct the respondents to treat the petitioner as not being in default of payment of income tax till the disposal of the appeal to be filed under the provisions of the Income Tax Act, 1961.

**Prayer in W.P.(MD)No.1433 of 2021** : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, to call for the records on the file of the second respondent in impugned notice for settling a sale proclamation dated 18.01.2021, quash the same as illegal and improper and direct the respondents to treat the petitioner as not being in default of payment of income tax till the disposal of the appeal to be filed under the provisions of the Income Tax Act, 1961.

(in all W.Ps)

For Petitioner : Mr.R.Janarthanan

For Respondents : Mrs.M.Parameswari,
For Mrs.S.Srimathy,
Standing counsel.



**COMMON ORDER**

Heard the learned counsel for the writ petitioner and the learned standing counsel for the respondents.

2.Though the writ petitions are three in number, they pertain to same cause of action.

3.The writ petitioner was a partner in M/s.Deivam Motors. The said firm was dealing in two wheeler. The partnership was dissolved in the year 2013.

4.The assessment years pertain to 2011-2012 and 2012-2013. The Assessing Authority passed orders way back on 27.03.2014 levying tax and penalty on the firm and its partners. Thereafter, rectification order was also passed and the demand was also enhanced. The petitioner filed an appeal but the same was dismissed on 20.08.2019. The petitioner did not challenge the order passed by the Appellate Authority within time before the Tribunal. Since the order passed by the Appellate Authority was not stayed or challenged, the second respondent went ahead with the execution proceedings. An order of attachment was passed on 27.09.2019 and notice for settling the sale proclamation was issued on 04.02.2020. After the valuation exercise was completed, sale proclamation was issued on 27.02.2020 and it was also published in the newspaper. At this stage, the writ petitioner woke up and filed one writ petition after another.

5.I directed the respondent to file their counter affidavit and a detailed counter affidavit had also been filed.

6.Today when the matters were taken for final disposal, the learned counsel for the petitioner submitted that he had already moved the Income Tax Appellate Tribunal and also the Appellate Authority. He however fairly states that since there has been delay in filing the appeal, he had also filed a petition for condonation of the delay. He however submitted that if this Court were not to intervene, the entire issue may even become infructuous as the sale proceedings are to be held on 31.03.2021.

7.The learned counsel also drew my attention to the circular issued by the Central Board of Direct Taxes in this regard. He would point out that in a case, where the outstanding demand is disputed before the Commissioner of Income Tax (Appeals), the assessing officer shall grant stay of demand till disposal of first appeal on payment of 15% of the disputed demand. I also take note of the fact that even before the appeal period could be exhausted, the respondents had proceeded to effect attachment of the property on 27.09.2019.

8.I must also take note of fact that the nation was struck by Covid-19 pandemic and therefore, the petitioner obviously had some difficulties in pursuing the matter further.

9.At this stage, the petitioner thorough his counsel gives an undertaking that he would remit a sum of Rs.50,000/- towards the publication expenses. Of course, this is only rough estimate and it is open to the second respondent to quantify the exact amount and call upon the petitioner to pay the same. The petitioner agrees to bear the entire publication and other incidental expenses. The petitioner also agrees to pay 15% of the demand within a period of four weeks from the date of receipt of a copy of this order. All the contentions of the petitioner are left open.

10.Recording the undertakings of the petitioner to pay 15% of the demand within four weeks from the date of receipt of a copy of this order and also the undertaking to pay the cost of publication incurred by the respondent sofar and his further undertaking to pay a sum of Rs.50,000/- within seven days from the date of receipt of a copy of this order, I direct the respondents to keep all the impugned proceedings in abeyance for a period five months from the date of receipt of a copy of this order. The petitioner's counsel states that he has filed two appeals before the Commissioner of Income Tax (Appeals), Madurai and he has filed one appeal before the Tribunal. It is for the petitioner to pursue his remedies and get his delay condonation petition allowed and also press for interim order.

11.These writ petitions are disposed of on these terms. No costs. Consequently, connected miscellaneous petitions are closed.

**15.02.2021**

Index : Yes / No
Internet : Yes/ No
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Note : Issue order copy on **18.02.2021.**

In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

**G.R.SWAMINATHAN, J.**

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**15.02.2021**