IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.08.2015

CORAM

THE HONOURABLE MR.JUSTICE V.RAMASUBRAMANIAN
AND
THE HONOURABLE MR.JUSTICE T.MATHIVANAN

W.A.No.1002 of 2015

1. The Commissioner of Income Tax (Appeals-10)
No.121, Mahatma Gandhi Road
Chennai 600 034

2. The Income Tax Officer
Non Corporate Ward – 20(3)
Room No.407, Wanaparthi Block
No.121, Mahatma Gandhi Road
Chennai 600 034 ...Appellants

-vs-

M.Kannabiran ...Respondent

Appeal under Clause 15 of the Letters Patent against the order dated 9.6.2015 made in W.P.No.16249 of 2015.

Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, directing the 2nd respondent to keep his Notice of Demand dated 31.3.2015 in abeyance by not recovering the Tax amount of Rs.12 37 540/- for the Assessment Year 2009-2010 as per his Assessment Order 31.3.2015 from the petitioner till the disposal of the Appeal by the 1st respondent besides directing the 2nd respondent to lift the Pre-Assessment Order of Attachment dated 26.3.2015 as regards Item Numbers 2 to 6.

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For Appellants : Mr.T.Pramod Kumar Chopda
Standing Counsel

For Respondent : Mr.K.Ravi Anantha Padmanabhan

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JUDGMENT

(Judgment of the Court was made by V.RAMASUBRAMANIAN, J.)

The Revenue has come up with the above writ appeal challenging an order passed by the learned Judge setting aside a notice of demand.

2. Heard Mr.T.Pramod Kumar Chopda, learned standing counsel for the appellant. Mr.K.Ravi Anantha Padmanabhan, learned counsel takes notice for the respondent.

3. The respondent filed a writ petition in W.P.No.16249 of 2015 seeking a writ of mandamus to direct the Income Tax Officer to keep the notice of demand issued on 31.3.2015 in abeyance, till the disposal of an appeal filed by him before the Commissioner of Income Tax (Appeals). By an order dated 9.6.2015, the learned Judge allowed the writ petition. But unfortunately, the learned Judge granted a larger relief to the respondent than what he himself was entitled to and what he himself sought.

4. What the respondent sought was only a limited order of protection till the disposal of a statutory appeal by the Commissioner of Income Tax (Appeals). But the learned Judge has set aside the notice of demand itself. Though the respondent is happy, the department is unhappy and it has come up with the above appeal.

5. Nothing more is required to dispose of this appeal rather than having a mere look at the prayer made in the writ petition and the operative portion of the order of the learned Judge. The prayer made by the respondent in the writ petition is as follows:-

> "To issue a writ of mandamus, directing the second respondent-Income Tax Officer, Non Corporate Ward-20(3) to keep his Notice of Demand dated 31.3.2015 in abeyance by not recovering the tax amount of Rs.12,37,540/- for the Assessment Year 2009-2010 as per his Assessment Order 31.3.2015 from the petitioner till the disposal of the appeal by the first respondent besides directing the second respondent to lift the Pre-Assessment Order of Attachment dated 26.3.2015 as regards item numbers 2 to 6."

6. The operative portion of the order of the learned Judge reads as follows:-

> ''9. Net result, the writ petition is allowed by setting aside the Demand Notice, dated

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31.03.2015, and by lifting the Pre-Assessment Order of Attachment, dated 26.03.2015 as regards Item Nos.2 to 6. The first respondent / appellate authority is consequently directed to dispose of the statutory appeal preferred by the petitioner before him within a period of 8 weeks from the date of receipt of a copy of this order on merits and in accordance with law."

7. Therefore the writ appeal deserves to be allowed. But it is pointed out by Mr.N.Ravi Anantha Padmanabhan, learned counsel for the respondent that despite the order of the learned Judge, the appellants understood the spirit of the order correctly and disposed of the appeal against the assessee. The assessee has now filed a further appeal before the Income Tax Appellate Tribunal along with a stay petition.

8. Therefore the writ appeal is allowed modifying the order of the learned Judge to the effect that the respondent will have a limited protection against coercive action, only till the disposal of the stay petition by the Income Tax Appellate Tribunal. The Income Tax Appellate Tribunal shall dispose of the stay petition in the appeal filed by the respondent within two weeks. Consequently, M.P.No.1 of 2015 is closed. No costs.

Sd/-
Assistant Registrar(CS-III)

//True Copy//

Sub Assistant Registrar

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To

1. The Commissioner of Income Tax (Appeals-10)
No.121, Mahatma Gandhi Road
Chennai 600 034

2. The Income Tax Officer
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Chennai 600 034

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3. The Income Tax Appellate Tribunal
A-3, Second Floor
Rajaji Bhavan
Besant Nagar
Chennai 600 090

1 CC to Mr.T.Pramod Kumar Chopda, Advocate SR.No. 45028

1 CC to Mr.K.Ravi Anantha Padmanabhan, Advocate SR.No. 45034

W.A.No.1002 of 2015

KGK (CO)
PSI (11.09.2015)

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