IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.07.2015

Coram

The Hon'ble Mr. Justice T.RAJA

W.P.Nos.20277 and 20278 of 2015
and
M.P.Nos.1,2, 1 and 2 of 2015

Amala Bose .. Petitioner in W.P.No.20277/2015

Bose Chandra Ebenezer .. Petitioner in W.P.No.20278/2015

Vs.

1.The Income Tax Officer,
Non-Corporate Ward 2(5),
Coimbatore - 641 018.

2.The Commissioner of Income Tax
(Appeals) - 2, Coimbatore.

3.The Branch Manager,
State Bank of Mysore,
Velandipalayam Branch,
1J, Sabapathi Street, Bose Complex,
NSR Road, Coimbatore - 641 038. .. Respondents in W.P.No.20277/2015

1.The Income Tax Officer,
Non-Corporate Ward 2(5),
Coimbatore.

2.The Commissioner of Income Tax
(Appeals) - 2, Coimbatore.

3.AXIS Bank,
Saibaba Colony Branch,
No.56, Bharathi Park, II Cross Road,
Saibaba Colony,
Coimbatore - 641 011.

4.HDFC Bank,
Saibaba Colony Branch,
No.7, Sairam Tower, NSR Road,
Saibaba Colony,
Coimbatore - 641 011.

5.Indian Bank,
Lawly Road Branch,
No.281, Thadagam Road,
Venkatapuram, Velandipalayam Post,
Coimbatore. .. Respondents in W.P.No.20278/2015

Prayer in W.P.No.20277 of 2015: Petition filed under Article 226 of the Constitution of India praying to issue a writ of certiorarified mandamus to call for the records of the first respondent in PAN:ADIPB1444Q dated 27.05.2015 and quash the order passed therein and further direct the respondent to redeposit the amount from the fixed deposit Nos.324003, 359884, 954197 and 359214 appropriated unlawfully with interest and further restrain the first respondent from taking any other coercive steps for recovery pending disposal of the appeal filed on 25.05.2015 against the assessment orders dated 30.03.2015 passed in PAN No.ADIPB1444Q by the first respondent for the assessment years 2008-09 to 2013-14 on the file of the second respondent.

Prayer in W.P.No.20278 of 2015: Petition filed under Article 226 of the Constitution of India praying to issue a writ of certiorarified mandamus to call for the records of the first respondent in PAN:AAAPE5981C dated 27.05.2015 and quash the same and further direct the first respondent to lift the attachment of the bank accounts of the petitioner held with the 3rd to 5th respondent Banks in A/c bearing No.909020031809467, 25691570000561, 410407000 respectively and further restrain the first respondent from taking any other coercive steps for recovery pending disposal of the appeals filed on 25.05.2015 against the assessment orders dated 30.03.2015 passed in PAN No.AAAPE5981C for the assessment years 2008-09 to 2013-14 on the file of the second respondent.

For Petitioner .. Ms.Pushya Sitaraman, Sr. Counsel for M/s.P.Saravanasowmiyan in both the W.Ps

For Respondents .. Mr.T.Pramod Kumar Chopda, Sr.Standing Counsel for R1 & R2 in both the W.Ps

COMMON ORDER

These two writ petitions have been filed by the petitioners on the sole ground that the assessing officer has wrongly come to the conclusion that he has no power to consider the stay applications even if the demand is disputed in the appeals.

2.Ms.Pushya Sitaraman, learned senior counsel appearing for the petitioners disputing the stand taken by the first respondent/assessing officer, has drawn the attention of this Court to the Instruction No.1914 giving guidelines for disposal of the stay petition. As per Clause 2(B) of the instruction, the stay petitions filed with the assessing officers must be disposed of within two weeks of the filing of the petitions and the assessee must be intimated of the decision without delay. Again relying upon Clause C (iii) - Guidelines for Staying Demand, it was stated that the payment by instalments also to be liberally allowed so as to collect the entire demand within a reasonable period not exceeding 18 months. While the guidelines are very clear, the offer made by each of the petitioner to pay a sum of Rs.1,00,000/- every month, i.e. Rs.6,00,000/- in all these matters, in all fairness, ought to have been accepted by the assessing officer. On the other hand, being a quasi judicial authority, the first respondent passed an order stating that he has no power, that clearly shows that he was unaware of the Instruction No.1914.

3.It is at this point of time, Mr.T.Pramod Kumar Chopda, learned standing counsel appearing for the respondents 1 and 2 submits that if each of the petitioner is prepared to pay Rs.1,00,000/- in each petition i.e. a total amount of Rs.6,00,000/- per month, they may be directed to pay their instalments at the rate of Rs.1,00,000/- per assessment year.

4.In view of the Instruction 1914, the assessing officer has got ample power and as he has completely overlooked the same, this Court is inclined to stay the impugned orders. Accordingly, the impugned orders are stayed subject to payment of Rs.1,00,000/- per assessment year by each of the petitioner, within a period of two weeks from the date of receipt of this order. The petitioners shall continue to pay Rs.1,00,000/- each.

5.In view of the above, the order of attachment issued by the assessing officer is hereby lifted. It is needless to mention that the petitioners shall make the payment during the third week of every month and the appellate authority shall consider the pending appeals on merits expeditiously.

6.It was also brought to the notice of this Court by the learned senior counsel for the petitioners that so far as W.P.No.20277 of 2015 is concerned, as against the demand of Rs.10,75,920/-, the first respondent has recovered a sum of Rs.12,43,630/-. It is not known on what basis, the assessing officer recovered the entire amount available in the account of the petitioner, which is more than the demand. Be that as it may, the excess amount of Rs.1,67,710/- shall be directed to be adjusted towards the dues payable by the petitioner in the forthcoming months.

7.With the above observation and direction, both the writ petitions are disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Asst.Registrar (CO)

/true copy/

Sub Asst. Registrar

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To

1.The Income Tax Officer,
Non-Corporate Ward 2(5),
Coimbatore - 641 018.

2.The Commissioner of Income Tax
(Appeals) - 2, Coimbatore.

+2 ccs to Mr.P.Saravanasowmiyan, Advocate, sr.34215 & 34213
+2 ccs to Mr.T.Pramodkumar Chopda, Advocate, sr.34096 & 34097

W.P.Nos.20277 & 20278 of 2015

km(co)
kra(03/08)