IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.09.2015

CORAM

THE HON'BLE MR. JUSTICE N. KIRUBAKARAN

W.P.No.28629 of 2015
and
M.P.No.1 of 2015

Dr.Pratima Venkatachalam ..Petitioner

/vs/

1.The Commissioner of Income Tax (Appeals),
No.121, Nungambakkam High Road,
Chennai 600 034.

2.Income Tax Officer,
International Taxation -2(1),
7th Floor, Annex, Building No.121,
Nungambakkam High Road,
Chennai600 034. ..Respondents

Writ Petition is filed under Article 226 of Constitution of India praying for issuance of Writ of Certiorarified Mandamus to call for the records and quash the notice bearing No.PAN:AQKPP4278K/ 2015-16, dated 14.08.2015 on the file of the 2nd respondent Income Tax Officer, International Taxation-2(1), Chennai-34 and consequently forbear the 2nd respondent from initiating any proceedings for the recovery of the sum of Rs.98,73,120/- till the disposal of the petition for interim stay pending on the file of the 1st respondent the Commissioner of Income Tax (Appeals), Chennai-34.

For Petitioner :Mr.Ravi for
M/s Gupta and Ravi
For Respondents:Mr.Rajkumar for
Mr.T.Promodkumar chopra
Senior Standing Counsel

ORDER

The petitioner is an Income Tax Assessee regarding capital gain. He filed original return for the assessment year 2009-2010 on 17.06.2009 and the same was accepted. Subsequently, it was re-opened and the re-assessment order was passed. Therefore, the petitioner has filed a stay petition before the Assessment Officer/second respondent to stay the said assessment, which was dismissed. Again, the petitioner has filed an appeal before the first respondent/Commissioner of Income Tax(appeals) against the assessment order. Even in that appeal, the petitioner has filed a stay petition. When the stay petition is pending before the first respondent/Commissioner of Income Tax, the second respondent/Assessment Officer has passed the impugned demand notice for demand of Rs.98,73,120/- on 14.08.2015. Challenging the above said order dated 14.08.2015, the present writ petition has been filed before this Court.

2.Heard Mr.Ravi, learned counsel appearing for the petitioner and Mr.Rajkumar, learned counsel representing for Mr.T.Promodkumar Chopra, learned Senior Standing Counsel appearing for the respondents/Income Tax.

3.It is evident that an appeal against the assessment order passed by the second respondent/Assessment Officer has been filed before the first respondent/Commissioner of Income Tax(appeals) and the same is pending. Pending disposal of the appeal, the petitioner has also moved the stay petition and no order has been passed. In that situation, the present impugned order has been passed.

4.The learned Senior Standing Counsel appearing for the respondents would submit that the Commissioner has got no power to pass any stay order.

5.The said contention is not sustainable, when the Appellate Commissioner has got power to modify or set aside or pass any order regarding the demand, that goes without saying that the said Officer without closing the matter has got ample power or incidental power to quash any order, pending disposal of the appeal.

6.In view of that, the impugned order dated 14.08.2015 passed by the second respondent/Assessment Officer is set aside and the first respondent/Commissioner of Income Tax is directed to pass order in the stay petition, within a period of four weeks from the date of receipt of a copy of this order.

7.Accordingly, the writ petition is ordered. No costs. Consequently, connected Miscellaneous Petition is also closed.

-s/d-
Assistant Registrar(J)
dt:05/10/2015

True Copy

Sub-Assistant Registrar

ari

To
1.The Commissioner of Income Tax (Appeals),
No.121, Nungambakkam High Road,
Chennai 600 034.

2.Income Tax Officer,
International Taxation -2(1),
7th Floor, Annex, Building No.121,
Nungambakkam High Road,
Chennai600 034.

+1 cc to M/s.Gupta & Ravi Advocate sr.49584
+1 cc to Mr.T.Pramodkumar Chopda, Advocate sr.49620

W.P.No.28629 of 2015

kk(co)
aa07/10/2015