IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.10.2015

CORAM:

THE HONOURABLE MR. JUSTICE R.MAHADEVAN

W.P.Nos.29815 and 29816 of 2014
and
M.P.Nos.1 and 2 of 2014
In
WP.No.29815 of 2014

N.Balasubramanian .. Petitioner in both the W.Ps

Vs

1.The Assistant Director of Income Tax (Inv.) Unit II,
67 A, Race Course Road,
Coimbatore - 641 018.

2.Commissioner of Income Tax III,
67 A Race Course Road,
Coimbatore - 641 018.

3.The Deputy Commissioner of Income Tax, Circle I, Adams Building,
121, 60 Feet Road,
Tirupur - 641 602. .. Respondents in both the W.Ps

W.P.No.29815 of 2014: Writ Petition filed under Article 226 of the Constitution of India for the issuance of a Writ of Certiorari to call for the records on the file of the first respondent in ADIT/U-II/Imp Order/CBE/2012-13/SOFT dated 04.10.2012 and quash the same inso far as relating to title deeds of properties as contrary to the scheme of Section 133A of the Income Tax Act, 1961, as contrary to law, arbitrary and violative of Articles 14 and 19(1)(g) of the Constitution.

W.P.No.29816 of 2014: Writ Petition filed under Article 226 of the Constitution of India for the issuance of a Writ of Certiorarified Mandamus to call for the records on the file of the third respondent in PAN:ADOPB4165A/13/14 dated 07.08.2013 and quash the same in so far as demanding a bank guarantee for

Rs.1.25 crores for the return of 28 Nos. of title deeds of immovable properties of the value of Rs.33.51 crores impounded under Section 133A of the Income Tax Act, 1961 by the first respondent while directing the third respondent to accept security of properties as submitted by the application dated 20.08.2013 against the security offered thereunder.

For Petitioner.. Mr.C.Natarajan, Sr. Counsel
for Mr.N.Inbarajan
in both the W.Ps

For Respondents.. Mr.T.Pramod Kumar Chopda
in both the W.Ps

COMMON ORDER

Challenging the orders of the first respondent dated 04.10.2012 and third respondent dated 07.08.2013 respectively, the petitioner has filed the present writ petitions.

2.The petitioner is an assessee on the file of the third respondent and manufacturer of various hosiery products and also running an industry under the name and style of M/s.Soft Hosiery Mills. In the said Mills, the petitioner made huge investments by way of land, buildings, machineries and various other capital assets. Besides the said business, the petitioner is engaged in real estate business. During the course of survey by the first respondent, an impounding order dated 04.10.2012 was passed, under Section 133A of the Income Tax Act, for impounding 34 documents. Consequent to the survey, the petitioner voluntarily deposited Rs.1,23,11,065/- on various dates towards taxes due. With respect to the assessment year 2012-2013, notice was issued on 08.09.2014 and for the assessment year 2013-2014, no notice was issued.

3.The petitioner filed an application dated 10.04.2013 for return of impounded title deeds. But the third respondent, by order dated 23.07.2013, declined to release the documents and directed the petitioner to furnish bank guarantee to the tune of Rs.1.25 crores. Since the petitioner was unable to furnish the bank guarantee, he made several representations/applications to the respondents for release of title deeds. The inaction on the part of the respondents to consider the representations/applications of the petitioner, made the petitioner to move this Court with the above writ petitions.

4.Heard the learned senior counsel appearing for the petitioner and the learned counsel appearing for the respondents and also perused the materials available on record.

5.From a perusal of the letter dated 20.08.2013 addressed to the third respondent, it is seen that the petitioner had already expressed his willingness to offer proper security and inspite of the same, the respondents are not releasing the title deeds. In the said letter, the petitioner has stated as under:

> "We are told that, under the provisions, the title deeds have been impounded for enquiry and months have elapsed. Rs.7.17 crores stipulated as in our case is not a one time receipt or payment but the sum of all monies turned over during months in the business. The tax collected already will cover the liability.
>
> Still, without prejudice, we are ready and willing to offer proper security.
>
> We request you to accept the security of the landed properties measuring 16.86 cents situated at B.S.Sundaram Road, Tirupur, which are encumbrance free, the current market value of which will be at least Rs.2,20,05,000/-. We are ready to charge the properties and execute requisite undertaking not to alienate the same till the matter is finalized. We hope for a favourable response from your end and in the meantime, you may kindly hand over the original title deeds of the properties impounded relying upon Section 131 of the Act."

6.Now, the learned senior counsel for the petitioner, in order to give quietus to the issue, agreed for the release of 28 documents relating to business ventures, keeping the attachment in tact relating to other six documents in respect of the private properties of the petitioner. The said submission of the learned senior counsel for the petitioner has been recorded.

7.Since the value of those six documents are over and above the demand raised by the department, there may not be any impediment to release the documents relating to business ventures, touching the legal right of the buyers. Hence the respondent is directed to release 28 documents, keeping the attachment over six documents relating to private properties. Such exercise shall be completed within a period of two weeks from the date of receipt of a copy of this order. It is also directed that the entire proceeding relating to the assessment has to be completed as expeditiously as possible.

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

-s/d-
Assistant Registrar(CS-V)
Dt: 3/11/2015

This matter having been listed under on 20.11.2015 under the caption "for Being Menitoned"in pursuant to the order of this Court dated 12.10.2015 and made in W.P.Nos.29815 and 29816 of 2014 in the presence of the above said counsels on either side the court made the following order:

This matter has been listed today under the caption "for being mentioned".

2. When the matter is taken up for hearing, it is represented that while passing the order dated 12.10.2015, the attachment was directed to be continued in respect of six documents relating to private properties, but the value of those properties are too below the demand raised by the department. Hence, Paragraph No.7 of the order needs modification.

3. In view of the same, paragraph No.7 of the order dated 12.10.2015 is modified as follows:-

"7. Hence, the respondent is directed to release 28 dcuemtns keeping the attachment over six documents relating to private properties and two documents relating to B.S.Sundaram Road properties. Such exercise shall be compoleted within a period of two weeks from the date of receipt of a copy of this order. It is also directed that the entire proceeding relating to the assessment has to be completed as expeditiously as possible".

-s/d-
Assistant Registrar(CS-II)

True Copy

Sub-Assistant Registrar

To

1. The Assistant Director of Income Tax
(Inv.) Unit II,
67 A, Race Course Road,
Coimbatore - 641 018.

2. Commissioner of Income Tax III,
   67 A Race Course Road,
   Coimbatore - 641 018.

3. The Deputy Commissioner of Income
   Tax, Circle I, Adams Building,
   121, 60 Feet Road,
   Tirupur - 641 602.

+1 cc to Mr.N.Inbanathan Advocate sr.62863

+1 cc to Mr.T.Pramodkumar Chopda Advocate sr 62880

su(co)
prk20/11