IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.10.2015

CORAM

THE HONOURABLE MR. JUSTICE R.MAHADEVAN

W.P.No.33408 of 2015
and
M.P.No.1 of 2015

M/s.Shree Ganesh Ventures rep. by
its Partner Sri Rahul Saraf ... Petitioner

Vs.

1. Deputy Commissioner of Income Tax,
   Business Circle XII, Kannammai Building,
   No.611, Anna Salai, Chennai - 6.

2. Commissioner of Income Tax
   (Appeals - V),
   121, Mahatma Gandhi Road,
   Chennai - 34.

3. Tax Recovery Officer - 9,
   Office of the Commissioner of
   Income Tax 9,
   Kannammai Building, III Floor,
   No.611, Anna Salai, Chennai - 6.

4. Chief Branch Manager,
   The Federal Bank Limited,
   SVS Club Building,
   No.61, Anna Salai, Mount Road,
   Chennai - 2.

5. The Managing Directors,
   Kaizen Cold Formed Steel Pvt.
   Ltd., Chennai. ... Respondents

Petition filed under Article 226 of The Constitution of India praying to issue a writ of certiorarified mandamus to call for the notice under Section 226(3) of the Income Tax Act, 1961 in TRC No.5/2010-2011, PAN.AAOFS0487K/2007-2008 dated 01.10.2015 and notice under Section 226(3) of the Income Tax Act, 1961 in TRC No.5/2010-2011, PAN.AAOFS0487K/2007-2008 dated 13.10.2015 issued to the fourth and fifth respondents and summons in terms of Rule 83 of the II Schedule of the Income Tax Act, 1961 in TRC No.5/2010-2011/A.Y.2007-2008/NCW-6(2)/TRO-9 PAN.AAOFS0487K dated 30.09.2015 issued to the petitioner on the file of the third respondent herein relating to the assessment year 2007-2008 and quash the same and direct the first and third respondents not to initiate any further proceedings for recovery of the disputed demand till the disposal of the appeal before the second respondent herein.

For Petitioner : Dr.Anita Sumanth

For Respondents : Mr.T.Pramod Kumar Chopda,
Senior Panel Counsel for R1 to R3

ORDER

Challenging the notices dated 01.10.2015 and 13.10.2015 issued to the fourth and fifth respondents and the summons dated 30.09.2015 issued to the petitioner by the third respondent, the petitioner has filed the present writ petition.

2.The petitioner is an assessee on the file of the first respondent and filing income tax returns regularly. In respect of the assessment year 2007-2008, the petitioner filed income tax return on 15.11.2007, declaring income of Rs.30,07,110/-. During the course of assessment, queries were raised in respect of certain transactions and the petitioner also submitted all the particulars. On the basis of the details furnished by the petitioner, the first respondent completed the assessment by order dated 30.12.2009. Aggrieved against the same, the petitioner preferred an appeal before the Commissioner of Income Tax (Appeals) IX, Chennai along with a stay petition. By order dated 01.02.2010, the first respondent rejected the stay petition and directed the petitioner to pay 50% of the demand within fifteen days from the date of receipt of the letter and the balance by 15.03.2010. Subsequently, the petitioner filed a petition for stay of recovery of the disputed demand and the same is pending. Pursuant to the notice of reassessment dated 30.12.2009, the petitioner filed a writ petition in W.P.No.6004 of 2012 and this Court, by order dated 13.03.2012, granted interim stay. In the meantime, the appeal originally numbered as ITA 295 of 2009 was renumbered as ITA 305 of 2013-14 upon re-organization of the Appellate Commissioners. When the hearing of the appeal is in progress, the petitioner received an intimation from the fourth respondent stating that recovery proceedings would be initiated and the petitioner also received summons to appear before the Tax Recovery Officer in respect of the disputed demand. The petitioner also appeared before the Tax Recovery Officer and informed that the hearing of the appeal is going on. Since the third respondent insisted for the appearance of the Directors of the company and proposed to proceed with the recovery proceedings, the petitioner is before this Court.

3.Heard the learned counsel for the petitioner and the learned senior panel counsel for the respondents 1 to 3.

4.For the assessment year 2007-08, the petitioner filed an appeal before the appellate authority along with stay petition. Learned counsel for the petitioner submitted that the stay petition was not at all taken up for hearing for five years and recently, the Commissioner of Income Tax (Appeals)/second respondent has taken up the main appeal itself for hearing and it is half way. Now, the learned counsel for the petitioner seeks a direction to the appellate authority to dispose of the appeal at an early date.

5.Learned counsel for the Department, on the other hand, submitted that the petitioner is attempting to sell the properties as well as the receivables from other third parties are sought to be taken away. Hence recovery proceedings were initiated and the same has not attained finality.

6.To give quietus to the issue, the appellate authority is directed to dispose of the appeal at an early date, preferably within a period of eight weeks from the date of receipt of a copy of this order. If the appeal is not disposed of within the time stipulated herein, necessary orders shall be passed in the stay petition at an early date. The recovery proceedings initiated by the Department shall be kept in abeyance till orders are passed in the appeal.

7.With the above direction, the writ petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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To

1. The Deputy Commissioner of Income Tax,
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   SVS Club Building,
   No.61, Anna Salai, Mount Road,
   Chennai - 2.

+1cc to Dr.Anita Sumanth, Advocate, S.R.No.58152
+1cc to Mr.T.Pramod Kumar Chopda, Advocate, S.R.No.58184

W.P.No.33408 of 2015

VD(CO)
CA(06/11/2015)