

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.11.2015

CORAM :

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

WP.No.35051 of 2015

MP.No.1 of 2015

Padmavathy Ravishankar

... Petitioner

Vs

1.The Income Tax Officer,
Non Corporate Ward 23 (2)
Tambaram, Chennai-45

2.The Commissioner of Income Tax, Appeals-10
Nungambakkam, Chennai-34

... Respondents

Prayer:- This Writ Petition is filed to issue a Writ of Certiorarified Mandamus to call for the records of the impugned notice dated 29.07.2015 in Stay of Collection/2015-16/AAFPR5821F of the 1st Respondent and to quash the same and to direct the 2nd Respondent to dispose of the appeal filed by the Petitioner.

For Petitioner : Mr.K.Ravi

For Respondent : Mr.T.Pramodkumar Chopda,
Senior Counsel

ORDER

In this Writ Petition, the Petitioner seeks for a direction to the 2nd Respondent to dispose of the appeal filed against the assessment order and to quash the impugned notice dated 29.07.2015 of the 1st Respondent, demanding 50% of the demanded tax in order to stay the recovery proceedings, pending disposal of the appeal.

2. The case of the Petitioner is that the Petitioner filed Income Tax Return for the assessment year 2012-13 on 27.3.2013, admitting an income of Rs.3,57,010/-. The Petitioner purchased UDS of 1189 sq.ft. with 139 sq.ft. common passage and buildings thereon, comprised in S.No.207/24, New T.S.No.22 Part, Block No.30, Koyambedu

Village, Chennai, by a registered sale deed dated 3.2.2006 for a total sale consideration of Rs.25,09,940/-. Later, the Petitioner came to know that there was a title dispute in the said lands between the Tamil Nadu Housing Board and one S.Gowri, which was settled out of court in the year 2011, pursuant to which, a sale deed dated 12.05.2011 was executed in respect of 6.06 grounds in favour of said S.Gowri, who in turn executed a sale deed dated 29.12.2011 in favour of the Petitioner. Though the market value of the property in the sale deed dated 29.12.2011 is shown as Rs.1,15,28,000/-, no consideration was paid by the Petitioner. However, a notice under Section 143(2) dated 23.9.2013 was issued. The defect in the title due to the change in the area of the property was sought to be rectified by the Petitioner by the sale deed dated 12.08.2011. The Petitioner explained to the 1st Respondent that the properties conveyed by the said two sale deeds are one and the same and that the property conveyed under the sale deed dated 29.12.2011 is the only area of the property reconveyed after rectification. However, the 1st Respondent by assessment order dated 31.03.2015, demanded a tax of Rs.54,05,590/- including interest, taking into consideration the market value of the property as Rs.1,15,28,000/- and adding Rs.9,00,000/- as unexplained investment, to the total income. As against the same, the Petitioner preferred an appeal before the 2nd Respondent and filed a stay petition before the 1st Respondent to stay the collection of tax, pending the appeal. By the impugned order, dated 29.7.2015, collection of tax was stayed till the disposal of the appeal, on payment of 50% of the demanded tax. As against the same, this Writ Petition has been filed.

3. The learned counsel for the Petitioner contended that the defect in the title due to the change in the area of the property was sought to be rectified by the Petitioner by the sale deed dated 12.08.2011 and after rectification, the properties conveyed under the two sale deeds are one and the same and that the Petitioner has not paid any consideration as stated in the sale deed dated 29.12.2011, which was confirmed by the vendors and the addition of Rs.9,00,000/- is unwarranted, as the same has been explained. The learned counsel for the Petitioner has submitted that the Petitioner is willing to pursue the appeal and to pay a substantial sum, as a condition to stay the recovery proceedings, till the disposal of the appeal.

4. On the above averments and the submissions of the learned counsel for the Petitioner, this court heard the learned standing counsel for the Respondents and considered

the submissions made by the learned counsel on either side and also perused the materials placed on record.

5. According to the Respondents, the property conveyed in the original deed is not exactly the same as the property mentioned in the sale deed dated 29.12.2011 and hence, only by the sale deed dated 29.12.2011, the ownership is legally vested with the assessee. According to the Petitioner, only for record purpose, the total market value of the property was mentioned in the sale deed dated 29.12.2011 as Rs.1,15,28,000/- as per the directions of Sub Registrar, taking into consideration the guide line value prevailed in the year 2011. Be that as it may. It appears that the property in question, which was earlier registered inadvertently came to be registered once again, which lead the assessing authority to pass the impugned assessment order under the provisions of the Income Tax Act, 1961, as against which, the Petitioner filed an appeal before the 2nd Respondent and in the stay application filed by the Petitioner, the Petitioner was directed to pay 50% of the demanded tax in order to stay the recovery proceedings till the disposal of the appeal, which is challenged in this Writ Petition. Since the Petitioner is willing to pursue the appeal before the 2nd Respondent, she can be permitted to raise all the grounds and submissions made in this Writ Petition before the 2nd Respondent on payment of substantial sum to stay the recovery proceedings, pending the appeal.

6. Accordingly, considering the facts and circumstances of the case, without going into the merits of the case, the Petitioner is directed to pay a sum of Rs.10,00,000/- (Rupees Ten Lakhs Only) within a period of eight weeks from the date of receipt of a copy of this order. On such payment, the Respondents are restrained from initiating the recovery proceedings against the Petitioner, till the disposal of the appeal by the 2nd Respondent. The 2nd Respondent is directed to dispose of the appeal, on merits and in accordance with law, as expeditiously as possible.

7. With the above directions, this Writ Petition is disposed of. No costs. Consequently, the connected MP is closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

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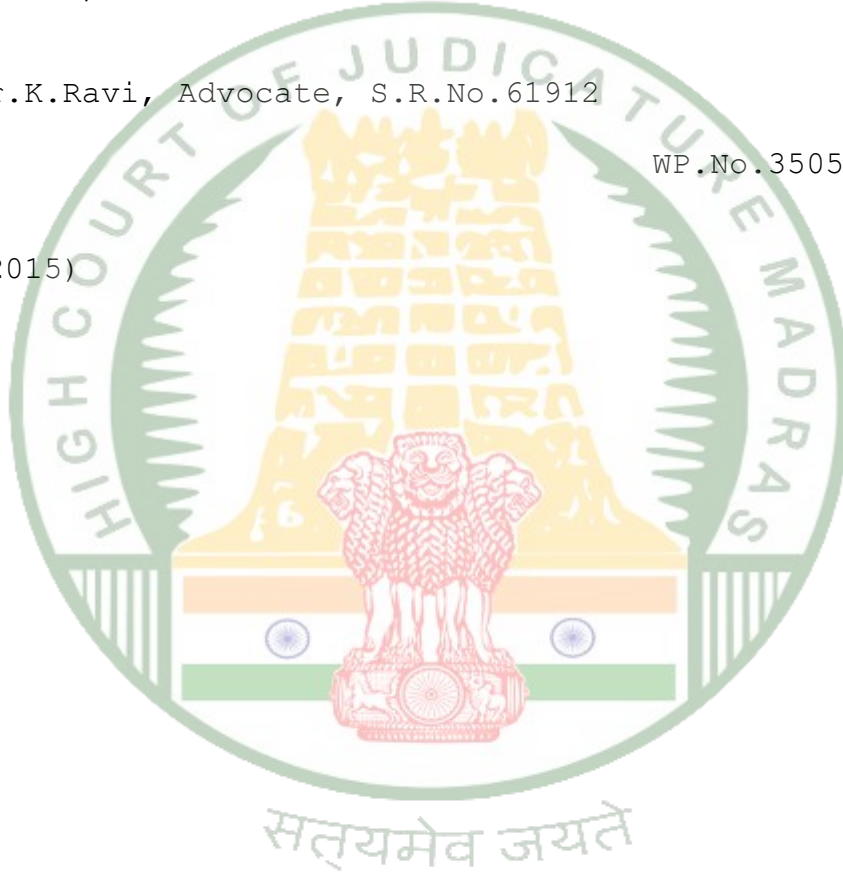
To:

- 1.The Income Tax Officer,
Non Corporate Ward 23 (2)
Tambaram, Chennai-45
- 2.The Commissioner of Income Tax,
Appeals-10
Nungambakkam, Chennai-34

+1cc to Mr.K.Ravi, Advocate, S.R.No.61912

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CA(25/11/2015)



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