IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.12.2015

CORAM:

THE HON'BLE MR. JUSTICE R. MAHADEVAN

W.P.No.38674 of 2015
and M.P.Nos.1 & 2 of 2015

T.M.Ramalingam ... Petitioner

Vs

Deputy Commissioner of Income Tax
Central Circle-II 63 Race Course Road
Coimbatore-641018. ... Respondent

Writ Petition filed under Article 226 of the Constitution of India seeking a writ of certiorari to quash the Impugned Notice vide proceedings reference No. ADOPR7424C/AYs 2009-10 & 2012-13/CC-2/CBE/2015-16 dated 23.11.2015.

For petitioner : Mr.S.Ferozkhan

For respondents : Mr.T.Pramodkumar Chopda,
Sr.Panel Counsel

O R D E R

Heard Mr.S.Ferozkhan, learned counsel for the petitioner and learned Senior Panel Counsel, who took notice for the respondent and with their consent, the main writ petition itself is taken up for hearing.

2. This writ petition has been filed challenging the notice dated 23.11.2015.

3. It is the case of the petitioner that as against the order of assessment, he preferred an appeal before the Commissioner of Income Tax (Appeals) along with a stay petition on 30.04.2015 and the same was also intimated to the respondent. However, without giving any notice to the petitioner, the

respondent served notice under Section 226(3) of the Income Tax Act, 1961 on the petitioner's Bank personally and demanded that the fixed deposits be withdrawn and credited to the account of the Income Tax Department. Accordingly, the Bankers withdrawn the same and credited a sum of Rs.1,33,86,909/- to the account of the Income Tax Department. Aggrieved over the same, the petitioner approached this Court and this Court by a common order dated 18.06.2015, directed the appellate authority to take up the stay application and dispose of the same within a stipulated time with a further direction not to resort any coercive proceedings as against the petitioner. Pursuant to the said direction issued, the appeal filed by the petitioner was dismissed on 14.09.2015 and a certified copy of the same was received by the petitioner on 23.10.2015, which was also intimated to the appellate authority. It is the grievance of the petitioner that though the petitioner is having 60 days time for filing an appeal before the Income Tax Appellate Tribunal as against the orders of the first appellate authority, i.e., time till 22.12.2015, the respondent sent a notice 23.11.2015, directing the petitioner to pay the tax amount on or before 04.12.2015. Challenging the same, the petitioner is before this Court.

4. The learned counsel for the petitioner would submit that though time till 22.12.2015 is available to the petitioner for filing an appeal before the Income Tax Appellate Tribunal, the respondent has issued the impugned notice dated 23.11.2015 directing to pay the outstanding demand of Rs.1,19,33,957/- on or before 04.12.2015, which is unsustainable in law. Further, the learned counsel would submit that a direction may be given to the respondent not to initiate coercive recovery proceedings till the stay application to be filed along with appeal is disposed of by the Income Tax Appellate Tribunal.

5. The learned Senior Panel Counsel appearing for the department has submitted that the notice challenged in this writ petition is only an intimation and not a recovery notice.

6. This Court considered the submissions made by the learned counsel on either side and perused the materials available on record.

7. It is not in dispute that the petitioner is having time till 22.12.2015 for filing an appeal before the Income Tax Appellate Tribunal. Hence, the petitioner is directed to file

an appeal before the Income Tax Appellate Tribunal along with a stay application, on or before 22.12.2015 and on such filing, the same shall be entertained by the Appellate Tribunal. Further, the Appellate Tribunal is directed to dispose of the stay application on merits and in accordance with law, within a period of four weeks thereafter. It is made clear that there shall not be any recovery till the disposal of the stay application.

The writ petition is disposed of in the above terms. No costs. Connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

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To

1.The Income Tax Appellate Tribunal,
Chennai.

2.Deputy Commissioner of Income Tax
Central Circle-II 63 Race Course Road
Coimbatore-641018.

+2cc's to Mr.S.Ferozkhan, Advocate, S.R.No.65844
+1cc to Mr.T.Pramodkumar Chopda, Sr.Standing Counsel
for Income - Tax Department, S.R.No.66080

W.P.No.38674 of 2015

BVR(CO)
CA(16/12/2015)