IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.12.2015

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THE HONOURABLE MR.JUSTICE R.MAHADEVAN

W.P.No.39091 of 2015
and M.P.No.1 of 2015

Sulochana Bhimaraja [Petitioner]

Vs

1 The commissioner of Income Tax (Appeals)
Chennai

2 The Assistant Commissioner of Income Tax
Non Corporate Circle -3
Room No.623-A VI Floor New Block
Aayakarbhavan, NO.21 Nungambakkam High Road
Chennai-34

3 The Tax Recovery Officer-5
O/o.Pr CIT 5 V Floor Wanaparthy Block
Room No.526 D Cabin Aayakar Bhavan NO.121
Nungambakkam High Road Chennai-34

[Respondents]

Petition filed under Article 226 of the Constitution of India to issue a Writ of certiorari to call for the records relating to the impugned proceedings of the 2nd respondent dated 31.3.2015 for the Assessment year 2008-2009 relating to PAN ACGPS4706H and quash the same.

For Petitioner : Mr.A.Thiagarajan, Senior Counsel
for Mr.S.Rajakumar

For Respondents : Mr.T.Pramod Kumar Chopda,
Sr.Panel Counsel

O R D E R

Heard the learned Senior counsel for the petitioner and Mr.T.Pramod Kumar Chopda, learned Senior Panel Counsel, who took notice for the respondents and with their consent, the main writ petition is taken up for disposal.

2. The petitioner has come forward with this writ petition challenging the impugned proceedings of the 2nd respondent dated 31.3.2015 for the Assessment year 2008-2009 relating to PAN ACGPS4706H.

3.1 According to the petitioner, on 29.12.2010, an order of assessment was passed for the assessment year 2008-09, arriving at a taxable income of Rs.1,52,01,770/-. Subsequently, a notice dated 27.03.2014 was issued by the 2nd respondent under Section 148 of the Income Tax Act, calling upon the petitioner to file return as if no return was filed or a part of transaction was unreported. The petitioner sent a reply stating that the return was already filed on 02.08.2008. Thereafter, on 28.04.2014, a notice was issued proposing to reopen the assessment stating that the petitioner was wrongly granted exemption for sale of agricultural lands. The petitioner replied to the above notice by letter dated 10.06.2014 stating that the reopening cannot be permitted by law on the basis of change of opinion of the 2nd respondent. The 2nd respondent replied to the said letter after nine months on 23.03.2015 stating that the earlier order was passed without enquiry. In the meantime, in the personal hearing, it was also informed that Padur village is an agricultural village and population is less than 10,000/- and hence the asset cannot be treated as capital asset and earlier assessment was passed after due enquiry. A representation to that effect was also submitted by the petitioner on 02.01.2015. However without considering the same, relying upon certain judgments, the objections of the petitioner was rejected.

3.2 Further, according to the petitioner, without providing any time to submit any rejoinder, the impugned assessment order dated 31.03.2015 under Section 143(3) r/w Section 247 of the Income Tax Act was passed by the 2nd respondent, placing reliance upon the inspection report of the Inspector of Income Tax, Tahsildar, Statements of Local People and Judgments, the copies of which were never furnished. Aggrieved by the said order, the petitioner preferred an appeal under Section 246 of the Income Tax Act before the 1st respondent on 29.05.2015 with a petition to condone the delay. Whileso, a notice dated 24.08.2015 under Section 220(1) of the Act was issued by the 2nd respondent demanding payment from the petitioner within 7 days to avoid penalty. In reply, the petitioner by stating that the order is perse bad in law and an appeal has been filed, by letter dated 31.08.2015 has sought for stay of all further proceedings pending disposal of the appeal. However, the 3rd respondent has issued a notice dated 27.10.2015 under Section 222 of the Act, demanding payment within 15 days failing which further proceedings would be initiated under Sections 222 to 232 of the Act. Hence, the petitioner is before this Court.

4 It is the contention of the learned Senior counsel for the petitioner that when an appeal has been filed before the appellate authority challenging the assessment order dated 31.03.2015 for the assessment year 2008-09, and when an application for stay is filed

before the assessing authority, which is available at page 57 of the typed set of papers, recovery proceedings are unjustifiable and cannot be permitted to continue. The 2nd respondent is duty bound to pass orders on the application for stay filed under Section 220 (6) of the Income Tax Act, within a reasonable time. As far as the case of the petitioner is concerned, the petitioner has filed the said application on 31.08.2015, which has not been disposed of till date.

5. The learned Senior Panel Counsel for the respondents would submit that orders will be passed on the stay application submitted by the petitioner within the time stipulated by this Court.

6. Admittedly, there is a stay application pending before the Assessing Authority and also an appeal is pending before the appellate authority. Since there is a threat of recovery, the petitioner seeks indulgence of this Court. Hence, the 2nd respondent, before whom the stay application pending is directed to take up the stay application and pass appropriate orders within a period of four weeks from the date of receipt of a copy of this order. It is made clear that pending disposal of the same, there shall not be any recovery. The first respondent is directed to take up the appeal and dispose the same on merits as expeditiously as possible.

The writ petition is disposed of with the above directions. No costs. Connected miscellaneous petition is closed.

Sd/-
Asst.Registrar (CS II)

/true copy/

Sub Asst. Registrar

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To

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1 CC To Mr.S. Rajakumar, Advocate, Sr. 67492
1 cc to Mr.T. Premodkumar Chopda, Advocate, Sr. 67074

W.P.No.39091 of 2015

RSY (CO)
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