IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.11.2015

CORAM

The Hon'ble Mr.Justice R.MAHADEVAN

Writ Petition Nos.28359 to 28362 of 2013,
and
M.P.Nos. 1 of 2013 in all W.Ps
and
M.P.Nos.1 & 1 of 2014 in W.P.Nos.28359 & 23361 of 2013

1. Mrs.Vanitha Manickavasagam
... Petitioner in W.P.Nos.28359 & 28360/2013

2. Mrs.Sakunthala Vedachalam
... Petitioner in W.P.Nos.28361 & 28362/2013

Vs.

The Assistant Commissioner of Income Tax,
Business Circle XIV,
Room No.620, VI Floor, No.12,
M.G.Road, Chennai - 600 034. ... Respondent in all the W.Ps.

Prayer in W.P.Nos.28359 & 28361 of 2013 :-

Writ petitions are filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus, to call for records of the respondent culminating in the order, dated 30.09.2013, imposing a penalty of Rs.26,50,000/- on the petitioner under Section 271 (1) (c) of the Income Tax Act, and to quash the same and to forbear the respondent, his agents and servants or any other person claiming through or under him from initiating any action pursuant to the said order, including recovery of the said sum of Rs.26,50,000/- from the petitioner in any manner.

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Prayer in W.P.No.28360 of 2013 :-

Writ petition has been filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus to call for records of the respondent culminating in the orders/notices, dated 25.09.2013, issued to HDFC Bank, Citi Bank and Indian Overseas Bank under Section 226 (3) of the Income Tax Act, and to quash the same and to forbear the respondent, his agents and servants or any other person

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claiming through or under him from initiating any action pursuant to the said order and to direct the respondent to defreeze the said Bank accounts by withdrawing the said notices to the aforesaid Banks.

Prayer in W.P.No.28362 of 2013 :-

Writ petition has been filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus to call for records of the respondent culminating in the order/notice, dated 26.09.2013, issued to Indian Overseas Bank under Section 226 (3) of the Income Tax Act, and to quash the same and to forbear the respondent, his agents and servants or any other person claiming through or under him from initiating any action pursuant to the said order and to direct the respondent to defreeze the said Bank account by withdrawing the said notice to the aforesaid Bank.

For Petitioners
in all W.Ps. : Mr.Ramakrishna, Senior Counsel
for Mr.B.Giridhara Rao

For Respondent
in all W.Ps : Mr.T.Pramod Kumar Chopda
Standing Counsel (for Income Tax)

COMMON O R D E R

These writ petitions have been filed by the assessees to quash the impugned orders passed levying penalty as well as freezing the bank accounts.

2.The case of the petitioner in W.P.Nos.29359 and 29360 of 2013 is that she is a home maker and is possessed of properties including agricultural land in Mamallapuram and Cheyyur Villages in Kanchipuram District. She states that she and her mother Mrs.Sakunthala Vedachalam had inherited from her father, the above agricultural lands amongst other properties. The petitioner is an income tax assessee for the last 40 years and she has been promptly paying her taxes without any default. It is further stated that she filed her return of income for the assessment year 2008-2009 admitting an income of Rs.9,09,240/- earned from the properties. Out of the agricultural lands, she and her mother sold 5 acres during the relevant previous year, for Rs.90 lakhs, and the same has been shown as advance received on the sale of lands. She was advised by her Tax Consultant that the the above sale of lands would not attract capital gains under the Income-tax Act.

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3.It is further stated that the Assessing Officer enquired about the lands of the petitioner, through his Inspector, which the petitioner was not aware. The Assessing Officer took a view that these lands are vacant lands and they would attract capital gains. Without giving any opportunity to the petitioner, he invoked Section 50C of the Income-tax Act and adopted the petitioner's share of sale price at Rs.1,25,90,000/- as against the sale consideration of Rs.45 lakhs and levied tax on capital gains. The petitioner preferred an appeal against the order of the Assessing Officer to the Commissioner of Income-tax (Appeals), and the same was allowed by the Appellate Authority. It is further stated by the petitioner that the Department appealed against the order of the Commissioner of Income-tax (Appeals) before the Income Tax Appellate Tribunal, which was allowed, restoring the order of the Assessing Officer, thereby holding that the petitioner would be liable for payment of capital gains tax on the sale of the said lands. As against the order of the Tribunal, the petitioner preferred an appeal before this Court in T.C.(A)Nos.566 and 567 of 2013.

4.Even though this Court admitted the appeal of the petitioner, the petitioner had offered to pay and also paid a substantial part of the demand towards capital gains tax in monthly instalments, leaving only a balance of Rs.13,07,824/-. But the respondent herein invoked the provisions of Section 226 (3) of the Act and freezed all the three bank accounts of the petitioner, which has paralysed the entire financial operations. While so, the respondent issued a notice dated 22.08.2013 which was received by the petitioner only after the date of hearing fixed. Another notice was issued on 06.09.2013 refixing the hearing on 20.09.2013. Since the petitioner was out of the Country, it was received only by the employee on 12.09.2013 and the same was not brought to the notice of the petitioner. Further, strangely, the respondent did not choose to send the notice to her representative who was already on record nor did he inform him of the hearing on 20.09.2013. Therefore, the petitioner was not in a position to attend the hearing on that date. While so, the Department has levied a penalty of Rs.26,50,000/- for the alleged concealment of income. Hence, the petitioner has come up with W.P.(MD)No.28359 of 2013 to quash the order imposing penalty and W.P.(MD)No.28360 of 2013 to de-freeze the bank accounts.

5.The facts relating to W.P.(MD)Nos.28361 and 28362 of 2013, also lies in the similar lines as in W.P.(MD)Nos.28359 and 28360 of 2013. These writ petitions, ie., W.P.(MD)Nos.28361 and 28362 of 2013 have been filed to quash the order imposing penalty and also to de-freeze the bank accounts, respectively, with regard to the sale price of lands, pertaining to the petitioner herein.

6.In the mean while, T.C.(A)Nos.566 and 567 of 2013 were

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disposed of by a Division Bench of this Court on 06.08.2014, as reported in (2014) TIOL 1677 HC MAD -IT (Mrs.Sakunthala Vedachalam and another Vs. Assistant Commissioner of Income Tax, Chennai), wherein the entire assessment orders itself came to be quashed, hence, there is no reason for levying penalty. The learned Senior Counsel appearing for the petitioners has also not disputed that the levy of penalty will not stand, pursuant to the judgment rendered by the Division Bench in the case referred to supra.

7.Thus, in the light of the aforementioned judgment, all the Writ Petitions are allowed and the orders impugned herein are set aside. With regard to refund of amount if any, it is open to the petitioners to seek for the same by making appropriate application before the Authorities concerned, and such an application shall be filed by the petitioners within a period of two weeks from the date of receipt of a copy of this order. As and when such application is being moved by the petitioners, the same shall be considered and disposed of, by the Authorities concerned within a period of two weeks thereafter. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

sd/KM
To
The Assistant Commissioner of Income Tax,
Business Circle XIV,
Room No.620, VI Floor, No.12,
M.G.Road, Chennai - 600 034.

+ 1 cc to Mr.T. Pramodkumar, Advocate SR.64987
+ 4ccs to Mr.B. Giridhara Rao, Advocate sr.65084, 65085, 65086 &65087

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