BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 09.02.2015

CORAM
THE HONOURBLE MR.JUSTICE B.RAJENDRAN

W.P(MD).No.641 of 2015
and
M.P.(MD)No.1 of 2013

M/S. SASHWATH HOMES .. Petitioner

Vs.

1. THE COMMISSIONER OF INCOME TAX (APPEALS), MADURAI.

2. THE INCOME TAX OFFICER, WARD II (3), MADURAI.

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India for the issuance of a Writ of Mandamus forbearing the 2nd respondent from insisting to pay the tax amount demanded in Impugned demand notice dated 26.06.2014 until disposal of the appeal pending and reserved for orders before the 1st respondent.

For Petitioner : Mr.S.M.S.Johny Basha
For Respondents : Mr.R.Krishnamoorthy, senior counsel

ORDER

The writ petition has been filed for issuance of Mandamus forbearing the 2nd respondent from insisting to pay the tax amount demanded in the impugned demand notice, dated 26.06.2014.

2. Heard the learned counsel for the petitioner and learned senior counsel appearing for the respondents.

3. According to the petitioner already necessary appeal has been filed on 02.02.2014. In fact, in the appeal arguments have been heard as early as on 17.10.2014 and 24.11.2014 and Judgment has been reserved. Therefore, without passing any orders in the appeal even in the stay application, now the second respondent is attempting to coerce and collect and tax amount, which is the subject matter in the appeal itself. Therefore, the petitioner has come forward with this limited prayer that the authority needs to pass an order in the very appeal itself as the arguments have already been over.

4. The learned counsel for the respondents filed a detail counter, in which they would contend that the last hearing took place only on 24.11.2014 and the Judgment has not been reserved and according to them they need six months time to pass order and they are giving priority to the Judgment in old cases and he would contend that no stay application has been so far made. Therefore, the authority can collect the tax.

5. This Court cannot go into the merits of the claim as it is the subject matter of the appeal, which the authority alone can decide. According to the petitioner, the appeal has been argued and the matter is posted only for Judgment but so far no orders have been passed. According to the learned counsel for the respondents the last hearing was on 24.11.2014 and arguments have been heard. Even as per the counter, they need six months time to pass orders.

6. It is seen that the stay application has been filed by the petitioner concerned before the second respondent. Now, the arguments in the appeal is almost over, where the authority has got every liberty to pass appropriate orders either in the stay application or in the main appeal itself. Therefore, pending appeal, the question of harassment should not arise. Therefore, this Court directed the second respondent either to pass orders in the appeal or in the stay application, as they got every discretion to pass orders in the stay application.

7. The writ petition is disposed of accordingly. Consequently, connected Miscellaneous Petition is also dismissed. No costs.

Sd/-
Assistant Registrar

/True copy/

sub Assistant Registrar

To
1. THE COMMISSIONER OF INCOME,TAX (APPEALS), MADURAI.

2. THE INCOME TAX OFFICER, WARD II (3), MADURAI.

+1cc to MR. S.M.S.JOHNNY BASHA,ADVOCATE IN SR NO. 5854

+1cc to MR.R.KRISHNAMOORTHY,ADVOCATE IN SR NO. 5912

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