THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

AND

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

-

Writ Petition No.39454 of 2015

ORDER: (per Hon'ble Sri Justice Ramesh Ranganathan)

Heard Ms.Anjali Agarwal, learned counsel for the petitioner, and Sri K.Raji Reddy, learned Standing Counsel for the Income Tax Department, and, with their consent, the writ petition is being disposed of at the stage of admission.

The relief sought for in this writ petition is to issue a Writ of Mandamus declaring the order passed by the 1st respondent dated 24.04.2015 as illegal, unjustified and contrary to the provisions of law.

On an assessment order being passed on 24.02.2015 subjecting the petitioner to tax towards short term capital gains, the petitioner preferred an appeal to the Commissioner of Income Tax. She also filed an application to the Assessing Authority requesting him to grant stay pending disposal of the appeal. Section 220(6) of the Income Tax Act, 1961 (for short "the Act") provides that, where an assessee has presented an appeal under Section 246 or 246A, the Assessing Officer, in his discretion and subject to such conditions as he may think fit to impose in the circumstances of the case, treat the assessee as not being in default in respect of the amount in dispute in the appeal, even though the time for payment has expired, as long as such appeal remains undisposed of.

The power conferred on the Assessing Authority, under Section 220(6) of the Act, is to treat the assessee as not being in default in respect of the amount in dispute. For so treating the assessee, the Assessing Authority is empowered to impose any conditions, which he may consider fit to impose.

From a perusal of the impugned order dated 24.04.2015, it is clear that the petitioner had requested for grant of stay of collection of the tax for Rs.20,27,530/- on the ground that she was not in a position to pay such a huge demand, as she was passing through acute financial difficulties. The Assessing Authority held that, with regards her financial position, the petitioner did not enclose any evidence in support of the acute financial difficulties being faced by her; mere filing of an appeal was not a valid ground for stay of collection of tax;

the petitioner did not co-operate in completing the assessment proceedings; she did not even file her return of income for the assessment year 2010-11, though notice under Section 148 of the Act was issued and served on her on 14.03.2014; and, in these circumstances, her case did not fall for grant of stay of collection of the taxes. The petitioner's stay application was rejected.

The order under challenge in this writ petition does not suffer any legal infirmity necessitating interference in proceedings under Article 226 of the Constitution of India. Having sold the subject property and having put the vendee in possession thereof as early as on 12.11.2010, it is not open to the petitioner to now contend that she has not encashed the cheques received from the vendees and, consequently, she should be granted stay of collection of disputed tax. Failure to encash the cheques does not absolve the petitioner of her liability to pay tax. As has been rightly held by the Assessing Authority, the petitioner did not furnish proof of financial difficulties she claimed to be facing. The writ petition fails and is, accordingly, dismissed.

The petitioner filed an appeal on 24.04.2015 beyond the period of limitation of 30 days. The delay in preferring the appeal is said to be 24 days. Suffice it if the Commissioner of Income Tax (Appeals) is directed to hear and decide the petition, to condone the delay in filing the appeal, with utmost expedition.

The miscellaneous petitions pending, if any, shall also stand dismissed. There shall be no order as to costs.

RAMESH RANGANATHAN, J

M. SATYANARAYANA MURTHY, J

Date: 04.12.2015

JSU

<u>THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN</u>

AND

<u>THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY</u>

<u>Writ Petition No.39454 of 2015</u>

<u>Date: 04.12.2015</u>

JSU