IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :16.12.2016

CORAM

THE HONOURABLE MR. JUSTICE D.KRISHNAKUMAR

W.P.No.5002 of 2011
and
M.P.No.1 of 2011
and
M.P.No.1 of 2012

S.Murugabharathi ... Petitioner

vs.

Tax Recovery Officer - XXVIII,
121, Nungambakkam High Road,
Chennai - 600 034. ... Respondent

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari to quash the impugned order in Tr.No.1158/TRO-XXVIII/10-11 dated 8.2.2011 and consequently quash the proceedings in Tr.No.1158/TRO-XXVIII/10-11 dated 15.2.2011 as illegal and without jurisdiction.

For Petitioner : Mr.R.Sivaraman
For Respondent : Mr.M.Swaminathan
Senior Standing Counsel for IT

O R D E R

The petitioner has challenged the proceedings issued by the respondent under Section 226(3) of the Income Tax Act by treating the petitioner as the garnishee/defaulter. The defaulter is none other than the petitioner's father.

2. It is submitted by the learned counsel for the petitioner that the respondent issued notice u/s.226(3) on 6.8.2007 in From I.T.N.S.27 as per TR No.143/CR-1(3)/02-3 calling upon the petitioner to pay the amount due by him to the defaulter, namely, his father. Subsequently, the Income Tax Appellate Tribunal in IT (SS) No.56/Mds/2007 dated 14.2.2013 quashed the assessment proceedings in the case of S.Subramanian, the defaulter and hence no demand subsists as on today in the hands of the defaulter, therefore, all the consequential proceedings passed against the petitioner should be quashed and the Writ Petition should be allowed.

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

3. It is submitted by the learned counsel for the respondent that as against the order passed by the Tribunal dated 14.2.2013, revenue has filed TCA No.768 of 2013 and the Hon'ble Division Bench has admitted the tax case and granted an order of interim stay.

4. Considering the facts and circumstances of the case and the submissions made, since no demand subsists as on today in the hands of the defaulter, this Court is of the view that the Writ Petition can be allowed granting liberty to the respondent to proceed afresh if the circumstances warrants so based on the order to be passed in TCA No.768 of 2013 pending before this Court. Accordingly, the impugned proceedings are quashed and the Writ Petition is allowed. The respondent is given liberty to proceed afresh, if so advised depending upon the outcome of the Tax Case Appeal in the subject matter. No costs. Connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

asvm

To

Tax Recovery Officer - XXVIII,
121, Nungambakkam High Road,
Chennai - 600 034.

+1cc to Mr.Swaminathan, Advocate, S.R.No.73561

rp(CO)
rs(10/01/2017)

W.P.No.5002 of 2011
and
M.P.No.1 of 2011
and
M.P.No.1 of 2012

WEB COPY
https://hcservices.ecourts.gov.in/hcservices/