IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.11.2016

CORAM:

THE HON 'BLE MR. JUSTICE T.S.SIVAGNANAM

Writ Petition No.28600 of 2016

and W.M.P.Nos.24666 to 24668 of 2016

Smt.P.A.Mangalam .. Petitioner

/vs/

1.The Principal Commissioner of Income Tax,
121, Mahatma Gandhi Road, Chennai - 600 034.

2.The Assistant Commissioner of Income Tax,
Non Corporate Circle - 20(1),
121, Mahatma Gandhi Road,
Chennai - 600 034.

3.The Commissioner of Income Tax (Appeals)
121, Mahatma Gandhi Road,
Chennai - 600 034. .. Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus, to call for the records of the respondent in PAN AAOPM7320F and quash the impugned order dated 24.03.2016 in F.NO.Stay/ACIT-NCC.20/2015-16 and direct the 2nd respondent to grant stay of collection of demand for the assessment years 2009-10 till the disposal of the appeal by the Commissioner of Income Tax (Appeals)-14.

For Petitioner : Mr.Vijayaraghavan
FOR M/S.SUBBARAYA AIYAR PADMANABHAN

For Respondents : Mr.M.Swaminathan

ORDER

Heard Mr.Vijayaraghavan, learned counsel for the petitioner and Mr.M.Swaminathan, learned counsel for the respondent department.

2. The petitioner seeks for issuance of a Writ of Certiorari Mandamus to quash the order passed by the second

respondent, by which, the second respondent directed the petitioner to pay 15% of the tax demand as a condition precedent for grant of stay. At the time, when the writ petition was entertained, the following interim order was passed on 17.08.2016:

> "Heard Mr.Vijayaraghavan, for M/s.Subbaraya Aiyar Padmanabhan, learned counsel for the petitioner and Mr.M.Swaminathan, learned counsel for the respondent department.
>
> 2. This writ petition has been filed challenging the order passed in a stay petition filed by the petitioner dated 07.03.2016 for stay of collection of demand for the assessment year 2009-10.
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> 3. Initially, the petitioner had filed a stay petition and an order was passed by the first respondent on 03.11.2015 granting an order of interim stay subject to payment of 50% of the demand to be paid in 10 equal installments. The petitioner subsequently filed another stay petition on 07.03.2016 contending that she along with other co-owners transferred the property by executing a power of attorney dated 30.04.2008 and physical possession of the property was handed over to the buyer and the assessee received the sale consideration.
>
> 4. As the Assessing Officer invoked Section 50(C) of the Income Tax Act and applied guideline value of the Annasalai while computing the long time capital gain as sale consideration instead of considering Rs.4,000/- per sq.ft. received and admitted by the assessee, learned counsel for the petitioner contended that the transfer of property by the assessee has been admittedly made prior to the amendment of Section 50C as the same was amended with effect from 01.10.2009 and therefore, Section 50C cannot be invoked as the property was not transferred by way of registered sale deed. In this regard, reliance was also placed on the decision of the Hon'ble Divison Bench of this Court in CIT v. R.Sugantha Ravindran [352 ITR 488 (Mad)]. Further, the petitioner has also referred to the Central Board of Direct Taxes (CBDT) instruction No.1914, dated 21.03.1996, which was partially modified by the CBDT dated 29.02.2016. By referring to the said instruction, the petitioner has requested the first respondent to consider

the same. However, the respondent has disposed of the stay petition by directing the petitioner to pay 15% of the tax amount.

5. On a perusal of the impugned communication dated 24.03.2016, it is seen that the order has been passed not considering the petitioner's submissions or the effect of the decision of the Hon'ble Division Bench of this Court in R.Sugantha Ravindran (supra), but appears to be passed based on the memorandum of CBDT circular dated 29.02.2016. Thus, prima-facie it is seen that the contentions of the petitioner in the stay petition were not specifically dealt with. Three cardinal principles to be seen while granting an order of interim stay are prima facie case, balance of convenience and irreparable loss. However, this is not evident from the impugned order.

6. Learned counsel for the respondent department pointed out that the petitioner has not challenged the earlier stay order dated 03.11.2015 and even assuming the impugned order is stayed or modified, this would automatically revive the earlier stay order dated 03.11.2015. This argument is stated to be rejected on account of the fact that the department on it own volition has reduced the amount payable for grant of interim stay. Therefore, if the impugned order dated 24.03.2016 is stayed, then earlier stay order dated 03.11.2015 cannot be implemented as it has superseded and merged with the impugned order. Learned counsel for the respondent department further pointed out that the reduction in the amount of tax payable by impugned order itself is a reasonable order passed by the authority and does not call for interference.

7. However, before taking a decision in the matter, the respondent should file a counter affidavit as to whether the case as projected by the petitioner in the stay petition pointing out about the nature of transaction, the effect of the amendment to Section 50(C), the circular of CBDT in Circular No.5 of 2010, dated 03.06.2010, more particularly paragraph 23.4 therein, dealing with the applicability. These issues required to be considered after filing a counter affidavit. Therefore, I am of the view that the petitioner has made out a prima facie case for grant of interim order. Accordingly, there will be an order of interim stay of the impugned order. Consequently, the orders of attachment of the

rental income of the petitioner shall also remain stayed until further orders.

List the matter after four weeks for filing counter affidavit."

3. Today, when the matter is heard, the learned counsel for the revenue points out that, it is not in dispute that an appeal is pending before the third respondent against the order of the second respondent. Therefore, in the light of the said fact, the proper course to be adopted is for disposal of the appeal at an early date and until then the interim arrangement, which was ordered by this Court as mentioned above, should continue.

4. In the light of the same, this writ petition is allowed and the impugned order is set aside and the third respondent is directed to dispose of the appeal as expeditiously as possible, preferably, within a period of eight weeks from the date of receipt of a copy of this order. Till then the above referred interim order dated 17.08.2016, shall continue. Consequently, connected miscellaneous petitions are closed. No costs.

Sd/-
ASST. REGISTRAR

/TRUE COPY/

SUB ASST. REGISTRAR

To

1.The Principal Commissioner of Income Tax,
121, Mahatma Gandhi Road, Chennai - 600 034.

2.The Assistant Commissioner of Income Tax,
Non Corporate Circle - 20(1),
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Chennai - 600 034.

3.The Commissioner of Income Tax (Appeals)
121, Mahatma Gandhi Road,
Chennai - 600 034.

+1 cc to M/S.SUBBARAYA AIYAR PADMANABHAN, ADVOCATE SR.NO. 70832/16.

Writ Petition No.28600 of 2016

MMP 29.12.2016