IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.03.2016

CORAM

THE HONOURABLE Mr. JUSTICE M.DURAISWAMY

W.P.No.3145 of 2016 &
W.M.P.Nos.2583 & 2584 of 2016

Dr. D.Ramamurthy .. Petitioner

v.

1 The Principal Commissioner of Income Tax-I
No.63, Race Course Road
Coimbatore - 641 018

2 The Joint Commissioner of Income Tax
Non-Corporate Range-2
No.63, Race Course Road
Coimbatore-641 018

3 The Assistant/Deputy Commissioner of Income Tax
Corporate Circle- 2
No.63, Race Course Road
Coimbatore-641 018 .. Respondents

Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, calling for the records relating to the order of the 1st respondent made in Letter C.No.117(3)/ SP/PCIT-I/CBE/ 2015-16, dated 06.10.2015 and quash the same.

For Petitioner : Mr.AR.L.Sundaresan, Sr. Counsel
for Mr.S.Thangavel

For Respondent : Mr.S.Rajasekar
for Mr.T.PRomod Kumar Chopda
Standing Counsel



ORDER

The petitioner has filed the above writ petition to issue a Writ of Certiorari to call for the records relating to the order of the first respondent Letter C.No.117 (3)/SP/PCIT-I/CBE/2015-16, dated 06.10.2015 and to quash the same.

2. According to the petitioner, the second respondent passed the order dated 31.3.2015 holding that the revaluation of the asset has to be taken as full value of consideration for calculating capital gains and has made additions to the

capital gain as Rs.35,87,73,380/- and has assessed the capital gain tax at Rs.19,28,75,770/-, which includes an interest of Rs..5,16,50,775/-.

3. According to the petitioner, for the purpose of calculation of capital gain on transfer of assets from his proprietary concern to the partnership firm, he has taken the value as credited in the books of accounts of the firm, as on the date of transfer, as per the provisions of Section 45(3) of the Income Tax Act and filed his return accordingly.

4. As against the order of the second respondent, the petitioner preferred an appeal before the Commissioner of Income Tax (Appeals)-I, Coimbatore, on 28.04.2015 and the same is pending. On 08.07.2015, the petitioner filed an application before the first respondent praying for stay of collection of the demand till the disposal of the said appeal by the Commissioner of Income Tax (Appeals)-I, Coimbatore.

5. The Assessing Authority, by its order dated 05.10.2015, passed an order under section 154 of the Act and the balance demand outstanding is Rs.10,08,82,940/- from Rs.19,28,75,770/-. On 06.10.2016, the first respondent passed an order in the stay petition directing the Assessing Officer to grant installments on 50% of the demand and balance demand has to be stayed by the Assessing Officer till the disposal of the first Appeal. It was also made clear that the Assessing Officer may also request the CIT(A) for early hearing of the case.

6. The Assessing Officer, by its letter dated 04.12.2015, directed the petitioner to pay 50% of the demand outstanding in 10 equal monthly installments of Rs.50,44,147/- per installment and that the first installment is to be paid within one week from the date of receipt of the said letter.

7. The petitioner has challenged the order dated 06.10.2015 passed by the first respondent.

8. When the matter is taken up for hearing, Mr.AR.L.Sundaresan, learned Senior Counsel appearing for the petitioner submitted that the petitioner is not in a position to pay the sum of Rs.5,04,41,470/- as directed by the Assessing Officer and that the petitioner may be permitted to pay a sum of Rs.75,00,000/- apart from the sum of Rs.27,00,000/- already paid by the petitioner and that the first respondent may be directed to dispose of the appeal, within a stipulated time.

9. Mr.S.Rajasekar, learned Standing Counsel appearing for the respondents submitted that the petitioner has paid only a sum of Rs.27,00,000/- so far and he has not even paid a single installemnt as directed by the Assessing Officer.

10. Taking into consideration the submissions made by the learned counsel on either side, I am of the view that the petitioner can be directed to pay another sum of Rs.75,00,000/- in three installments.

11. Accordingly, I direct the petitioner to pay a sum of Rs.75,00,000/- in three installments, as follows:-

(i) 1st instalment shall be paid by the petitioner on or before 31.03.2016;
(ii) 2nd instalment shall be paid by the petitioner on or before 20.04.2016; and
(iii) 3rd instalment shall be paid by the petitioner on or before 10.05.2016;

The first respondent is directed to dispose of the appeal filed by the petitioner, within a period of three months from the date of receipt of a copy of this order.

With these observations, the writ petition is disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(J)

//True Copy//

Sub Assistant Registrar

Rj

To

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+1cc to Mr.T. Promod Kumar Chopda, Advocate, S.R.No.13127
+1cc to Mr.S. Thangavel, Advocate, S.R.No.13045

RSY(CO)
EU(15/03/2016)