IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.02.2016

CORAM

THE Hon'ble Mr.JUSTICE M. DURAISWAMY

W.P.No.5482 of 2016
and
WMP No.4828 of 2016

M/s Srivatchaa Shelter,
No.14/24, Second Street,
AWO SAI, Dhandayuthapani Nagar,
Kotturpuram,
Chennai - 600 085
rep by its Partner .... Petitioner

vs

Income Tax Officer,
Non Corporate Ward 2(4),
Wanaparthy Block, III floor
Room No.319, Aayakar Bhavan,
No.121, Nungambakkam High Road,
Chennai - 600 032
..... Respondent

Writ Petition filed under Article 226 of the Constitution of India praying this Court to issue a Writ of Certiorarified Mandamus to call for the records of the respondent in his proceedings leading to passing of order dated 24.07.2015, quash the same and direct the respondent to pass a stay order on the basis of CBDT instruction No.96/1969.

For petitioners : Mr.S. Sathiyanarayanan
for Mrs. Hema Murali Krishnan
For respondents : Mr.T. Ravikumar
Standing Counsel

ORDER

The petitioner has filed the above writ petition to issue a Writ of Certiorarified Mandamus to call for the records of the respondent in his proceedings leading to passing of order dated 24.07.2015, quash the same and direct the respondent to pass a stay order on the basis of CBDT instruction No.96/1969.

2. It is the case of the petiitonier that without following CBDT Instruction No.96 of 1999, the impugned order dated 24.07.2015 was passed by the respondent.

3. Mr.T. Ravikumar, learned Standing Counsel, appearing for the respondent, submitted that after passing of the order dated 24.07.2015, the same was modified by the respondent by its Order dated 13.01.2016, thereby, directing the petitioner to pay 50% of the tax. By Order dated 24.07.2015, the petitioner was directed to pay the entire tax, which was modified by the respondent, in its order dated 13.1.2016, to pay only 50% of the tax.

4. With regard to the order passed on 13.01.2016, the petitioner has not stated anything in the affidavit, filed in support of the writ petition. Since the order dated 24.07.2015, was modified by the respondent, the petitioner cannot challenge the order dated 24.07.2015. In all fairness, the petitioners should have stated about the order dated 13.01.2016, passed by the respondent, in the affidavit, filed in support of the writ petition. Suppressing the order dated 13.01.2016, the petitioner has filed the writ petition, challenging the order dated 24.07.2015, which is not in existence.

5. In these circumstances, the writ petition is liable to be dismissed and the same is dismissed. No costs. Consequently, the connected MP is closed.

Sd/-
Assistant Registrar(VI)

//True Copy//

Sub Assistant Registrar

sr

To

Income Tax Officer,
Non Corporate Ward 2(4),
Wanaparthy Block, III floor
Room No.319, Aayakar Bhavan,
No.121, Nungambakkam High Road,
Chennai - 600 032

+1cc to M/s. S. Sathiyanarayanan, Advocate, S.R.No.10898
+1cc to Mr.T. Ravikumare, Advocate, S.R.No.10858

RSK(CO)
EU(29/02/2015)

W.P.No.5482 of 2016