IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 21.03.2017

CORAM:

THE HONOURABLE MR. JUSTICE K.RAVICHANDRABAABU

W.P.No.6843 and 6968 of 2017
and
W.M.P.Nos.7406 & 7589 of 2017

Smt.Kathijathu Nasreen ... Petitioner in W.P.No.6843 of 2017

Shri Mafaz Mohamed ... Petitioner in W.P.No.6968 of 2017

Vs.

1. The Principal Commissioner of Income-TAx,
(International Taxation)
No.16, BSNL Tower-1, 4th Floor,
Greams Road,
Chennai - 600 006.

2. The Commissioner of Income Tax,
(Appeal) -16,
No.16, Greams Road,
Chennai - 600 006.

3. he Income Tax Officer,
(International Taxation)
No.16, BSNL Tower-1, 4th Floor,
Greams Road,
Chennai - 600 006. ... Respondents in both W.Ps'

Writ Petitions filed under Article 226 of the Constitution of India, for the issuance of writ of Certiorarified Mandamus, calling for the records before the 1st respondent in F.No.ITO 2(1)/2016-17/AABPN8274A and F.No.CIT (IT)/CHE/122(3)/2016-17/AFOPM1910N respectively and quash the order dated 07.03.2017 and direct the 2nd respondent viz., the learned Commissioner of Income Tax (Appeals) 16, Chennai to dispose the petitioner's appeal filed on 30.01.2017 at an early date.

For Petitioner (in both W.Ps') : Mr.Ashok Pathy for M/s.Pass Associates.

For Respondents (In both W.Ps') : Mr.T.Ravikumar, Senior Standing Counsel (IT)

COMMON ORDER

Mr.T.Ravikumar, learned Senior Standing Counsel (T) takes notice for the respondents and by consent of parties, main writ petitions are taken up for final disposal, in view of the fact that the issue involved herein lies in a narrow campus.

2. The petitioners in these writ petitions are aggrieved against the order passed by the Income Tax Officer, imposing conditions for grant of stay.

3. Both these petitioners were assessed for the assessment year 2014-2015 and aggrieved against such assessment orders, they preferred appeals before the appellate authority viz., the second respondent herein. Pending disposal of the appeals, they moved an application before the Income Tax Officer seeking for stay of further proceedings in pursuant to the order of assessment. Based on the directions issued by the Principal Commissioner of Income Tax, the Income Tax Officer passed the impugned orders, whereby modifying the earlier orders passed on 06.02.2017 and 09.02.2017 respectively. As per the modified order, impugned in these writ petitions, the respective petitioners were directed to pay 15% of the outstanding demand within one week from the date of communication of the said orders and further directed to pay the balance 35% in seven equal monthly installments, commencing from April 2017. Accordingly, the Income Tax Officer, granted stay of the balance 50% of the demand.

4. The learned counsel appearing for the petitioners submitted that the conditions imposed on the petitioners are onerous and they will not be in a position to pay the liquid cash as directed by the Income Tax Officer that too within one week from the communication of the said orders. Therefore, the learned counsel submitted that the petitioner in each case, may be permitted to furnish immovable property security satisfying to the tune of demand, thereby protecting the interest of the revenue.

5. Mr.Ravikumar, learned Senior Standing counsel appearing for the respondents department submitted that the petitioners were given time to pay the balance 35% in seven equal monthly installments and therefore, they cannot have any grievance. He further submitted that as against these orders, the petitioners can also filed an appeal before the appellate authority.

6. The learned counsel for the petitioners further submitted that the appeals filed against order of assessment itself were taken up for hearing and the same were posted for further hearing on 29.03.2017 and therefore, pending disposal of such appeals, the petitioners should be given some relief by way of interim measure.

7. Heard both sides.

8. It is not in dispute that assessment orders have been passed against the petitioners in respect of assessment year 2014-2015 and the said assessment orders were put to challenge before the appellate authority viz., the second respondent herein. Therefore, this Court, at this stage, is not inclined to go into the merits of the contentions raised by the petitioners in respect of the assessment made already, as it is for the appellate authority to consider and decide the same on its own merits and in accordance with law. However, the present orders were passed by the assessing authority by way of an interim relief, thereby staying the demand of 50%, however, by imposing two conditions as stated supra.

9. Considering the fact that the appellate authority has taken the appeals for hearing, this Court is of the view that the orders passed by the Income Tax Officer, impugned in these writ petitions, can further be modified as follows, so that the interest of both parties will be protected during the pendency of the appeals.

10. Accordingly, both the writ petitions are disposed of by passing the following order:

a) The petitioner in each writ petition shall pay 15% of the outstanding demand within three weeks from today;

b) In respect of balance 35% of the total demand, including the interest, the petitioners shall give bank guarantee to the satisfaction of the Income Tax Officer/Assessing authority, within a period of three weeks from today;

c) if any of the above conditions is violated or not complied with, the order already passed by the Income Tax Officer dated 07.03.2017 would stand restored; and

d) the appellate authority shall dispose of the appeals on merits and in accordance with law, after giving due opportunity of hearing to the petitioners within a period of eight weeks from the date of receipt of a copy of this order. It is made clear that the petitioners, without taking adjournment, should co-operate with the appellate authority for disposal of the appeals as stated supra within the time stipulated.

No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

vsm

To

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3. The Income Tax Officer,
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   No.16, BSNL Tower-1, 4th Floor,
   Greams Road,
   Chennai - 600 006.

+1cc to Mr.Pass Associates, Advocate, S.R.No.17881
+1cc to Mr.T.Ravi kumar, Advocate, S.R.No.17665

W.P.No.6843 and 6968 of 2017

kj(co)
rmp(22/03/17)