IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.03.2017

CORAM

THE HONOURABLE MR.JUSTICE K.RAVICHANDRABAABU

W.P.Nos.5855 of 2017

and

W.M.P.No. 6266 of 2017

Mrs. Padma Swaminathan ...Petitioner

Vs.

The Income Tax Officer,
Non-Corporate Ward - 15(4),
Room No. 207, Second Floor,
Wanaparthy Block,
121, Mahatma Gandhi Road,
Chennai - 600 034. ...Respondent

Prayer:

Petitions filed under Article 226 of The Constitution of India, praying for the issuance of a Writ of Certiorarified Mandamus, to call for the records of the respondent in impugned proceeding No. Nil dated 19.12.2016 and quash the proceedings dated 19.12.2016 issued therein and further direct the respondent to issue ''No Objection Certificate'' to enable the petitioner to close the Deposits in Capital Gains Account with UCO Bank, Anna Nagar West Branch, Chennai and withdraw the maturity value of deposits deposited for the AY 2013-14.

For Petitioner : Mrs.Pushpa Sitaraman
Senior Counsel
For M/s.J.Sree Vidya

For Respondents : Mr. S. Rajesh,
Standing Counsel (IT)
Mr.J.Narayanasamy
Standing Counsel (IT)

ORDER

The petitioner is aggrieved by the proceedings of the respondent dated 19.12.2016 refusing to issue No Objection Certificate for enabling the petitioner / assessee to withdraw amount from Capital Gains Accounts.

2. Heard the learned counsel for the petitioner and learned standing counsel appearing for the respondent. By consent of the learned counsel for the parties, the main writ petition itself is taken up for final disposal at the admission stage itself.

3. The short facts that arise for consideration in this writ petition, are as follows:-

The petitioner is a house wife, aged about 70 years. Her husband namely R. Swaminathan, owned a non residential house, which was alloted to him by the Tamil Nadu Housing Board under lease cum sale agreement. He executed Settlement Deed dated 07.02.2012, registered as a Document No.400/2012, settling 1/6th share in the said property in favour of the petitioner and 1/3 share each on their major son and daughter respectively, thereby retaining the balance with him. The said property was sold on 19.11.2012 under a registered Sale Deed for a sum of Rs. 14.75 crores. Her share of sale consideration is Rs. 2,45,83,333/-. While their children returned the Capital Gain Accounts on their respective shares, the share of the petitioner was clubbed with her husband's Capital Gain Accounts under section 54 of the Income Tax act and she had shown her return of Income filed for the assessment year 2013-2014 and declared the amount of Rs.1,25,310/- as tax. The petitioner wanted to purchase an apartment and with that view, a sum of Rs. 10 Lakhs was paid to one M/s. Sumanth & Co. as an advance and the balance amount of Rs. 2,45,71,750/- was deposited in the Capital Gain Accounts, in UCO Bank, Anna Nagar West Branch, Chennai.

4. In the meanwhile, the petitioner and her husband were advised that as per section 64 of the Income Tax Act, the Capital Gains would be assessed only in the hands of the husband, as the property in possession, has been settled by him in favour of the petitioner and therefore, the petitioner would not get benefit under section 54 of the Income Tax Act. Therefore, the petitioner's husband filed the said income tax returns for assessment year 2016-17 on 26.07.2016, declaring the long term capital gain arising from his 1/3rd share and the petitioner's 1/6th share and after claiming exemption under section 54 and 54EC, computed the Income taxable under capital gain at Rs.2,18,39,865/- and paid the tax of Rs.43,67,973/-.

5. Since the amounts in the capital gain scheme were not utilized, the petitioner wanted to close the accounts and withdraw the funds for the purpose of investment in a new house, for which, the petitioner has to get "No Objection Certificate" from the respondent. Accordingly, she filed an application seeking for issuance of "No Objection Certificate". The respondent, through the impugned communication, dated 19.12.2016 refused to issue "No Objection Certificate" unless, the capital gain tax is paid by the petitioner.

6. The learned counsel appearing for the petitioner submitted that there is no question of paying the capital gain tax once again by the petitioner, when her husband has paid the tax including that of the petitioner in respect of her 1/6th share in the property, while filing the return for the assessment year 2016-17 on 26.07.2016. However, she submitted that as the impugned order was issued without giving personal hearing to the petitioner, the respondent may be directed to give an opportunity of hearing to the petitioner and pass a fresh order thereafter, so that the petitioner would be in a position to satisfy the respondent, as to how the demand is not correct.

7. The learned counsel appearing for the petitioner also, in all fairness, submitted that though the capital gain accounts with the UCO Bank, Anna Nagar, Chennai are in eight different account numbers, the respondent may consider the request of the petitioner for issuing "No Objection Certificate" insofar as five accounts are concerned, by retaining the three accounts which would cover the total demand of the tax. By saying so, the learned counsel invited this Court's contention to the averments made in Para 8 of the affidavit, giving the details of such fixed deposit, with its maturity value as follows:

S.No.	Accounts No.	Maturity value (Rs.)
1	21000310017661	16,99,007/-
2	21000310017654	10,70,744/-
3	21000310017579	17,36,222/-
4	21000310017586	17,25,366/-
5	21000310017609	17,25,813/-
6	21000310018033	2,06,57,457/-
7	21000310017708	16,31,190/-
8	21000310017562	13,03,250/-

8. The learned counsel for the respondent submitted that in the very impugned order itself, it is made clear that the "No Objection Certificate" will be issued only on payment of capital gain tax by the petitioner and the petitioner can very well approach the respondent and raise her objections / representations for re-considering the issue.

9. Heard both sides.

10. The petitioner is aggrieved by the order of the respondent in refusing to give "No Objection Certificate" enabling her to withdraw the amount made by way of fixed deposit under the capital gain account. Admittedly, there are eight accounts with the maturity value as tabulated above.

11. It is also not in dispute that the tax liability under dispute would cover the total amount in deposit, in respect of three account numbers in serial Nos. 3, 4 and 7 of the above referred accounts. Considering the fact that the petitioner has come forward with a request only in respect of other five accounts and willing to go before the respondent for considering the matter afresh in respect of those three accounts, I am of the view that the interest of the Revenue will not be prejudiced in any manner, if the respondent is directed to issue "No Objection Certificate" in respect of remaining five accounts namely under Account Nos. 21000310017661, 21000310017654, 21000310017609, 21000310018033 and 21000310017562, since the petitioner is protecting the interest of the Revenue by not getting the "No Objection Certificate", for the present, in respect of the other three Accounts Nos. 21000310017579, 21000310017586 and 21000310017708 are concerned pending a decision to be made afresh by the respondent, after hearing the petitioner.

12. Accordingly, this writ petition is allowed in part as follows:

(i) The respondent shall consider the request of the petitioner for issuing "No Objection Certificate" in respect of Account Nos.21000310017661, 21000310017654, 21000310017609, 21000310018033 and 21000310017562, and issue "No Objection Certificate" in respect of those accounts to the petitioner within a period of two weeks from the date of receipt of a copy of this order.

(ii) The petitioner shall appear before the respondent within a period of two weeks from the date of receipt of a copy of this order and give her objections against the demand and raise all the contentions for issuing the "No Objection Certificate" in respect of other Accounts i.e. 21000310017579, 21000310017586 and 21000310017708.

(iii) On receipt of such representation/objections, the respondent shall hear the petitioner in person and pass fresh order on merits and in accordance with law, in respect of those three accounts within a period of four weeks thereafter. No costs. Consequently, connected miscellaneous petition is closed.

-Sd/-
Assistant Registrar

// True Copy //

Sub Assistant Registrar

To

The Income Tax Officer,
Non-Corporate Ward - 15(4),
Room No. 207, Second Floor,
Wanaparthy Block,
121, Mahatma Gandhi Road,
Chennai - 600 034.

+1 cc to Mr.S.Rajesh, Standing Counsel Sr.No.19856
+ 1 cc to M/s.J.Sreevida, Advocate Sr.No.19193

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SJ(C)

RRI 12/04/2017