IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.12.2017

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THE HONOURABLE MR.JUSTICE K.RAVICHANDRABAABU

Writ Petition No.33190 of 2017

1 Shri S.Amaranarayana Reddy [PETITIONER]

Vs

1 Tax Recovery Officer-6,
Office of the Principal Commissioner of
Income Tax-6, Chennai-600 034.

2 The Assistant Commissioner of Income Tax,
Non-Corporate Circle 15(1),
Chennai-600 034.

3 Income Tax Officer,
Corporate Ward 6(2), 7th Floor, New Block
Room No.707,
121, Mahatma Gandhi Road,
Chennai-600 034.

4 The Commissioner of Income Tax (Appeals)-15,
Aayakar Bhavan, Main Building,
Room No.223, Second Floor,
121, Mahatma Gandhi Road,
Chennai-600 034.

[RESPONDENTS]

PRAYER: Writ petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorari to call for the records in T.R.No.19/2017-18/ TRO-6 dated 23.10.2017 for the Assessment Years 2012-13 and 2013-14 on the file of the First Respondent and quash the same.

For Petitioner : Mr.M.P.Senthilkumar
For Respondents : Mr.A.P.Srinivas

O R D E R

Mr.A.P.Srinivas, learned counsel takes notice for the respondents and by consent, the main writ petition itself is taken up for final disposal.

2.The petitioner is aggrieved against the notice of demand dated 23.10.2017, demanding a sum of Rs.18,30,02,681/- from the petitioner for the Assessment Year 2012-2013 and 2013-2014, within 15 days of the receipt of the said notice.

3.It is seen that in respect of the Assessment Years 2012-2013 and 2013-2014, order under Section 143(3) was passed on 30.03.2015 and 31.03.2016 respectively by the Assessing Officer considering the sale proceeds of agricultural lands for Rs.22,64,39,900/-, Rs.7,34,89,759/- as income from business. Aggrieved against the said order of assessment, the petitioner preferred an appeal before the Commissioner of Income Tax (Appeals) and it is stated that the appeal in respect of the Assessment Year 2012-2013 is posted for hearing on 27.12.2017. In the meantime, the petitioner Assessee moved a stay petition before the Assessing Officer, which was disposed of on 22.08.2016, by directing the petitioner to pay a sum of Rs.1.6 crores on or before 02.09.2016 and subject to such payment and production of the evidence for making such payment, for keeping the balance demand in abeyance till the disposal of the appeal by the CIT(A). The petitioner did not comply with the said order and however, filed a petition for stay before the Commissioner of Appeals and it is stated that the stay petition is still pending before the Appellate Authority. But in the mean time, the present impugned demand notice was issued calling upon the petitioner to pay the tax due, as stated supra within 15 days. Therefore, the present writ petition is filed before this Court challenging the said impugned demand.

4.Mr.P.Senthilkumar, learned counsel for the petitioner submitted that even though the petitioner has not complied with the conditional order passed by the Assessing Officer, when the stay petition preferred by the petitioner before the Appellate Authority pending disposal of the main appeal, is still pending, making the impugned demand cannot be sustained.

5.Learned counsel for the respondent Department submitted that the Appellate Authority will consider the stay petition and dispose of the same on merits and in accordance with law within the time stipulated by this Court.

6.Upon hearing the learned Counsels appearing on either side and perusing the materials placed before this Court, it is evident that the order of assessment passed by the Assessing Officer has not attained the finality and the same is the subject matter of appeal before the CIT (Appeals). It is true that the Assessing Officer passed the conditional order, while disposing of the stay petition filed by the petitioner pending disposal of the appeals. But the fact remains that even though the petitioner has not complied with the said order, has, however, chosen to file further stay petition before the Commissioner of Appeals and the same is still pending. Therefore, in all fairness, the said stay petition has to be considered and decided on its own merits before issuing the impugned demand. Accordingly, this writ petition is disposed of, by directing the fourth respondent to take up the stay petitions filed by the petitioner and dispose of the same on merits and in accordance with law either on 27.12.2017 or within a period of two weeks from the date of receipt of a copy of this order. Based on the order passed in the stay petition, it is open to the petitioner to work out his remedy in accordance with law. Till the order is passed by the Appellate Authority in the stay petition, the impugned demand shall not be given effect to. No costs. The connected miscellaneous petition is closed.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

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+1 CC to Mr.G. Baskar, Advocate sr 90767.
+1 Cc to Mr.A.P. Srinivas, advocate sr 90811.

W.P.No.33190 of 2017

SP(21/12/2017)