IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.7.2017

CORAM :

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

Writ Petition No.13748 of 2017
&
WMP.No.14931 of 2017

A.Selvaraj ... Petitioner

Vs

1. The Principal Commissioner of Income Tax, Central II, Chennai-34.

2. The Deputy Commissioner of Income Tax, Central Circle-I, Coimbatore. ... Respondents

PETITION under Article 226 of The Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus to call for the records relating to impugned order C.No.2821/C-2/2016-17/18 dated 22.3.2017 issued by the first respondent, quash the same and further direct the 2nd respondent to return the sale deed Doc.No.1850 of 2011, the general power of attorney Doc.Nos.782 of 2008 and 783 of 2008 registered before the Sub-Registrar Office, Singanallur.

For Petitioner : Mr.R.Singaravelan, Senior Counsel for Mr.N.Sankarasabari

For Respondents : Mr.A.P.Srinivas, Standing Counsel

ORDER

Mr.A.P.Srinivas, learned Standing Counsel accepts notice for the respondents. Heard both. By consent, the writ petition itself is taken up for final disposal.

2. The petitioner is aggrieved by an order passed by the first respondent dated 22.3.2017, by which, the first respondent rejected the petitioner's request for return of a document being

a sale deed registered as Doc.No.1850 of 2011 dated 18.2.2011. The said document pertains to an immovable property measuring an extent of 2.07 acres in S.F.No.132/1A, Uppilipalayam Village, Coimbatore District, which was sold to the petitioner by M/s.Sri Hari Mills Private Limited represented by its power of attorney agent Sri.S.Arputharaj, who is none other than the son of the petitioner.

3. The petitioner came to adverse notice of the respondent Department pursuant to a search and seizure operation conducted in the premises of the son of the petitioner as well as the residential premises of the petitioner and as of now, an order of assessment has been passed as against the son of the petitioner demanding a sum of Rs.60.72 Crores by assessments made under Section 153A of the Income Tax Act, 1961 for the assessment years 2009-10 to 2014-15 and under Section 143(3) of the said Act for the assessment year 2015-16 by order dated 30.12.2016. The reason assigned by the first respondent in the impugned order is that the assessment proceedings have been commenced against the petitioner by issuing a notice under Section 153C of the said Act on 15.3.2017 for the assessment year 2011-12.

4. The Assessing Officer has submitted a report to the first respondent dated 20.3.2017 stating that the petitioner for the relevant assessment year i.e. 2011-12, has filed a return of income and has shown his total income only as Rs.16,06,447/- and therefore, the source of investment made for purchasing the subject property worth Rs.47,73,000/- remained unexplained. Therefore, the first respondent stated that since the assessment proceedings have been initiated against the petitioner, the document cannot be returned.

5. Considering the fact that already the assessment proceedings have been initiated against the petitioner by issuing a notice under Section 153C of the said Act dated 15.3.2017, it would not be proper to issue any direction to the first respondent to return the document, as the retention of the document has been explained in a proper manner, apart from an order being passed by the competent Authority, which empowers the retention of the document till 31.12.2017. Therefore, this Court is not inclined to set aside the impugned proceedings. However, this Court is inclined to issue a direction to the second respondent - Assessing Officer to complete the assessment proceedings initiated against the petitioner dealer pursuant to the notice dated 15.3.2017, at an early date.

6. Thus, while rejecting the challenge to the impugned proceedings, the writ petition is disposed of with a direction to the Assessing Officer - the second respondent to complete the

assessment proceedings initiated against the petitioner pursuant to the notice dated 15.3.2017 under Section 153C of the said Act, within a period of 30 days from the date of receipt of a copy of this order provided the petitioner extends his fullest cooperation with the Assessing Officer for completing the assessment. No costs. Consequently, the above WMP is closed.

"For Being Mentioned"

This matter having been listed on Tuesday, the Twenty fifth day of July, Two thousand and seventeen for being mentioned in pursuance of this order of this Court dated 31.07.2017 and made herein in the presence of Mr.R. Singaravelan, Senior Counsel for Mr.N. Sankarasabari, Advocate for the petitioner and of Mr.A.P.Srinivas, Advocate Standing Counsel for the respondents, the court made the following order:

This matter has been listed today under the caption "for being mentioned".

2. It is pointed out by the learned Senior Counsel for the petitioner that in Paragraph 5, this Court has ordered as follows:

> "5. ......as the retention of the document has been explained in a proper manner, apart from an order being passed by the competent authority, which empowers the retention of the document till 31.12.2017.........'"

3. It is the submission of the learned Senior Counsel that the language adopted by this Court in its above order is likely to be misunderstood by the officer while deciding the matter, as directed by this Court.

4. In my considered view, the language adopted in the order does not in any manner prejudice the rights of the petitioner. However, by way of abundant caution, the sentence shall be read as follows:-

> "......as the retention of the document has been explained in a proper manner, apart from an order being
>
> passed by the competent authority, authorising the retention of the document till 31.12.2017.........'"

The above sentence shall be substituted for the existing sentence in paragraph 5.

5. The learned Senior Counsel further submitted that at the time when the authorisation was given, the subject property was not included. All such contentions can be advanced before the Assessing Officer as per the direction issued by this Court in its order dated 25.07.2017.

6. The 30 days' period stipulated in the order dated 25.07.2017 will commence from the date of receipt of a copy of the amended order.

Sd/-
Assistant Registrar(CS IV)
Dated: 16.08.2017.

//True Copy//

Sub Assistant Registrar

To

1.The Principal Commissioner of Income Tax,
Central II,
Chennai-34.

2.The Deputy Commissioner of Income Tax,
Central Circle-I,
Coimbatore.

+1cc to Mr.N.Sankarasabari, Advocate, S.R.No.54081.

W.P.No.13748 of 2017
&
W.M.P.No.14931 of 2017

AR IV
CA(27/07/2017)
SP(16/08/2017)