IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.09.2017

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THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.23799 of 2017

Mr.S.A.Kamleshkumar Amarchand (HUF) ... Petitioner

Vs.

1.The Commissioner of Income Tax, Central-I,
No.46, (Old No.108), New Building,
Mahatma Gandhi Road, Nungambakkam,
Chennai-34.

2.The Deputy Commissioner of Income-tax,
Central Circle-I (2),
No.46, (Old No.108), New Building,
Mahatma Gandhi Road, Nungambakkam,
Chennai-34.

3.The Assistant Commissioner of Income-tax,
Central Circle-I (2),
No.46, (Old No.108), New Building,
Mahatma Gandhi Road, Nungambakkam,
Chennai-34. ... Respondents

Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, to call for the records on the file of the 3rd respondent pertaining to proceeding in AADHK0824K dated 17.05.2017, and quash the same and consequentially direct the respondents to release entire gold, jewellery and cash.

For Petitioner : Mr.Kumarpal R Chopra

For Respondents : Mr.A.P.Srinivas,
for R1 to R3 Standing Counsel

O R D E R

Heard Mr.Kumarpal R Chopra, learned counsel appearing for the petitioner and Mr.A.P.Srinivas, learned Standing Counsel, appearing for the respondents 1 to 3. With the consent on either side, the writ petition is taken up for final disposal.

2.The petitioner seeks for issuance of Writ of Certiorarified Mandamus, to quash the order passed by the third respondent dated 17.05.2017, and to direct the revenue to release the entire gold, jewellery and cash, which were seized from the business premises.

3.It may not be necessary to make an elaborate discussion on the merits of factual aspects, in the light of the relief to be granted by this Court in this writ petition.

4.Earlier the petitioner had filed a writ petition in W.P.No.14793 of 2016, seeking for issuance of writ of mandamus, to direct the respondents herein to release 20,643.97 gms of gold and jewellery seized vide Panchanama dated 21.11.2012. The said writ petition was disposed of by order dated 22.04.2016, with a direction to the third respondent viz., the Commissioner of Income Tax (Appeals) - 18, to dispose of the appeal filed by the petitioner on merits and in accordance with law within a period of three months from the date of receipt of a copy of this order.

5.With regard to the prayer made by the petitioner for release of the gold and jewellery, a direction was issued to the third respondent herein to consider the petitioner's prayer for release of gold and jewellery, taking into consideration the ratio in the case of Puspa Ranjan Sahoo v. Assistant Director of Income Tax (Inv.) reported in (2012) 252 CTR Reports. Pursuant to the directions, the respondent has passed the impugned order.

6.It is not disputed by the revenue that the entire tax liability payable by the petitioner has been fully cleared. However, it is a matter on record that the petitioner has preferred an appeal as against the order passed by the Commissioner of Income Tax (Appeals) before the Income Tax Appellate Tribunal (in short "ITAT") by appeal dated 15.11.2016, the said appeal is now pending before the Tribunal. With regard to levy of interest, the petitioner has filed a petition under Section 220(2A) of the Income-tax Act for waiver, by petition dated 10.05.2017, and the same is pending before the Prl. Commissioner of Income Tax, Central-I, Chennai. The respondent has rejected the petitioner's request for release of gold and jewellery, on the ground that the claim for interest under Section 220(2) of the Income-tax Act is outstanding; there is a likelihood of penalty demand on finalization of penal proceedings consequent to the order of the Hon'ble ITAT and no approval should be given for release where the valuation or the ownership of any particular seized assets is disputed, for which the circular of the C.B.D.T. dated 21.01.2009 has been relied on.

7.Thus, what has primarily weighed in the mind of the third respondent to reject the petitioner's request is that there is a likelihood of levy of penalty upon finalization of the proceedings by the ITAT, apart from the fact that the demand for interest is yet to attain finality in the light of the application filed by the petitioner for waiver. Thus, considering the facts and circumstances of this case, this Court is of the considered view that the petitioner should approach the Income-tax Appellate Tribunal for appropriate interim direction. This is so because, if any orders are passed in this writ petition, it may result in conflicting orders, since the larger issue is now pending before the Tribunal. The Tribunal, in its discretion, taking into consideration the facts of the petitioner's case and also the fact that the petitioner has paid the tax, may be inclined to grant appropriate interim relief.

8.A submission has been made by the learned counsel for the petitioner that apart from search and seizure operation conducted in the business premises of the petitioner, similar search and seizure operation was conducted in the business premises of the petitioner's brother. Though order of assessment has been passed against the petitioner's brother, till date they have not paid taxes, but the Department has released the gold and jewellery to the petitioner's brother. It is submitted that it is not known under what basis, the third respondent has released the gold and jewellery to the petitioner's brother, especially when they are defaulters in payment of tax as computed by the Assessing Officer. In my considered view, this aspect of the matter can also be placed before the ITAT by the petitioner in an application, which they can move for appropriate interim direction for release of gold and jewellery.

9.Accordingly, this writ petition stands disposed of by giving liberty to the petitioner to file proper interlocutory application in the pending appeal before the ITAT seeking for release of gold and jewellery. It is open to the petitioner to place all points before the ITAT and if, such application is filed, the ITAT is requested to give preference to the application and consider for an earlier disposal of the application, in the light of the fact that the gold and jewellery are in the custody of the Department for over five years. The petitioner is also entitled to raise plea that he alone has been discriminated, when his brother has been granted the relief for release of the gold and jewellery. The ITAT is requested to take a decision on the interlocutory application as expeditiously as possible preferably within a period of four weeks from the date of completion of pleadings in the application. Needless to say that the ITAT shall not be influenced by any observations made by the third respondent in the impugned order dated 17.05.2017. No costs.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

abr

To

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+1 cc to M/s.A.P.Srinivas Advocate sr 67157

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