IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.09.2017

CORAM :

THE HONOURABLE MR. JUSTICE T.S.SIVAGNANAM

Writ Petition No.25425 of 2017
and
W.M.P.No.26872 of 2017

M.K.Mahalakshmi ...Petitioner

Vs.

1. The Commissioner of Income Tax (III),
Coimbatore.

2. The Income Tax Officer,
Government of India,
No.15, Gandhiji Road,
Erode - 638 012. ... Respondents

Prayer : Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records of the 2nd respondent herein proceedings in PAN : AIXPM8662P /A.Y-2009-10 dated 28.04.2014 is illegal and quash the same and consequently, directing the respondents within the time stipulated to dispose of the appeal pending before the 1st respondent.

For Petitioner : Mr.K.Rajendra Prasad
For Respondents : Mr.A.N.R.Jayaprathap

O R D E R

Heard Mr.K.Rajendra Prasad, learned counsel for the petitioner and Mr.A.N.R.Jayaprathap, learned counsel appearing for the respondents.

2. With the consent of the learned counsel on either side, the writ petition itself is taken up for disposal.

3.The petitioner is before this Court seeking to quash the notice issued on 30.03.2017, which is a notice under Section 226 (3) of the Income Tax Act, 1961 addressed to the petitioner's bank, calling upon to pay a sum of Rs.2,50,380/- (Rupees Two Lakh Fifty Thousand Three Eighty Only) being the arrears of income tax payable by the petitioner.

4. The petitioner's case is that as against the order of assessment dated 16.12.2016 for the assessment year 2009-2010, the petitioner had preferred an appeal before the first respondent on 12.01.2017 and pending appeal, if the tax is directed to be paid or recovered, the petitioner would be put to prejudice.

5. When the writ petition came up for hearing on 21.09.2017, this Court directed the learned Panel Counsel for the respondents to verify whether the petitioner's appeal petition has been taken on file by the first respondent.

6. Today, when the matter is taken up for hearing, on instructions, the learned Panel counsel represents that the appeal petition has been taken on file and numbered as ITA No.264 of 2016-17 (2009-2010) dated 17.02.2017. It is further submitted that the petitioner has not moved any stay petition either before the Appellate authority or before the second respondent.

7. Considering the factual position as stated above and that the appeal petition has already been entertained by the first respondent, this Court is of the view that it is a fit case to grant liberty to the petitioner to approach the second respondent to file the stay petition to stay the demand of tax as qualified in the assessment order dated 16.12.2016 and the second respondent can be directed to take appropriate decision in the matter, considering the prima facie case which the petitioner makes out.

8. Learned counsel for the petitioner pleads that the petitioner is ready and willing to go before the second respondent and file a stay petition but in the interregnum, the petitioner's interest may be protected.

9. In the light of the above, the writ petition is disposed of by directing the second respondent to keep in abeyance the impugned notice dated 16.12.2016 for a period of two weeks from the date of receipt of copy of this order. Within such time, the petitioner shall file an application for stay of demand of tax as qualified in the assessment order dated 16.12.2016 and if such an application is filed, the second respondent is directed to consider the same and afford an opportunity of personal hearing to the petitioner/authorized representative and thereafter pass a speaking order on merits and in accordance with law. The second respondent should consider as to whether the petitioner has made out a prima facie for stay of entire demand of tax. It is made clear that till orders are passed by the second respondent in terms of the above directions, the impugned notice dated 30.03.2017 shall not be given effect.

10. Accordingly, the writ petition stands disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Asst.Registrar (CS III)

/true copy/

Sub Asst. Registrar

sli/maya

To

1. The Commissioner of Income Tax (III),
   Coimbatore.

2. The Income Tax Officer,
   Government of India,
   No.15, Gandhiji Road,
   Erode - 638 012.

+1cc to Mr.K.Rajendra prasad, Advocate Sr. 69931
+1cc to Mr.A.P.Srinivas, Advocate Sr. 70220

Writ Petition No.25425 of 2017

GMR(CO)
VR(12/10/2017)