IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.10.2017

CORAM

THE HONOURABLE Mr.JUSTICE T.S.SIVAGNANAM

Writ Petition Nos.26862 & 26863 of 2017
&
W.P.Nos.26848 and 26849 of 2017
&
W.P.M.P.Nos.28605, 28606, 28583 and 28584 of 2017

S.Karthikeyan ... Petitioner in W.Ps.26862 & 26863 of 2017

S.Uma Shankar ... Petitioner in W.Ps.26848 & 26849 of 2017

Vs

1. The Commissioner of Income Tax, (Appeals) -18
   121, Mahatma Gandhi Road
   Nungambakkam
   Chennai- 600 034

2. The Deputy Commissioner of Income Tax
   Central Circle-III (i/c)
   Coimbatore

3. The Assistant Commissioner of Income Tax
   Central Circle - III
   63, Race Course Road
   Coimbatore ... Respondents in all Writ Petitions

सत्यमेव जयते

Prayer in W.P.Nos.26862 & 26863 of 2017: Writ Petition filed under Article 226 of Constitution of India, to issue a Writ of Certiorari calling for the records of the 1st respondent and quash the order vide PAN AEEPK4137L dated 14.09.2017.

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Prayer in W.P.Nos.26848 of 2017: Writ Petition filed under Article 226 of Constitution of India, to issue a Writ of Certiorari calling for the records of the 1st respondent and quash the order vide PAN AACHP1597H dated 14.09.2017.

Prayer in W.P.Nos.26849 of 2017: Writ Petition filed under Article 226 of Constitution of India, to issue a Writ of

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Certiorari calling for the records of the 1st respondent and quash the order vide PAN AAFPU0364C dated 14.09.2017.

For Petitioner : Mr.B.Raveendran

For Respondent : Mr.A.P.Srinivas

ORDER

Heard Mr.B.Raveendran, learned counsel for the petitioners and Mr.A.P.Srinivas, learned standing counsel for the respondents.

2.The petitioners, two in number, have filed these writ petitions challenging four orders passed by the first respondent dated 14.09.2017 by which the first respondent has directed the petitioner to pay 20% of the total demand for being entitled for an order of interim stay of the remaining amount, as computed under the Assessment Orders for the years 2012-13 and 2014-15. Earlier, the petitioners S.Karthikeyan and Uma Shankar had approached this Court by filing W.P.Nos.22643 to 22646 of 2017 challenging the orders dated 16.05.2017, which is a garnishee order for recovery of the tax payable by respective assessees. The said writ petitions were disposed of by common order dated 24.08.2017 after taking into consideration that while stay petitions seeking stay of the tax as computed were pending, the Assessing Officer was not justified in issuing a notice under Section 226(3) of the Income Tax Act, 1961. The operative portion of the order and directions issued is extracted hereunder:

> "3.Thus, considering the facts of the case, it will be appropriate for the first respondent to pass order on the petition for stay of demand as the same has been presented on 25.04.2016. In the meantime, if the petitioners are compelled to pay the tax as quantified in the order of assessment, the petition for stay of demand itself would become infructuous. Therefore, there will be a direction to the first respondent to consider the petitioners' petition for stay of demand dated 25.04.2016 and pass orders on merits and in accordance with law, after affording an opportunity of personal hearing, as expeditiously as possible, preferably within a period of four weeks from the date of receipt of a copy of this order. Till such time, the impugned notices shall be kept in abeyance.
>
> 4.In fine, for the reasons stated above, the writ petitions are disposed of. No costs. Consequently, connected miscellaneous petitions are closed."

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3. Pursuant to the above direction, the first respondent issued notice dated 28.08.2017 to the petitioners directing them to appear for a personal hearing with regard to the stay petitions filed by them. The petitioner would contend that though the personal hearing was posted on 01.09.2017 at 11.30am, they received the notice only on 01.09.2017 much after the time fixed for the personal hearing. Subsequently, by representation dated 08.09.2017 the petitioner informed the first respondent that they are awaiting the certified copy of the order in the earlier writ petitions and would appear as soon as the copy of the order is received. Subsequently, a fresh date was assigned for hearing of the stay petition i.e., on 17.09.2017, on which date the petitioner's authorized representative appeared. In pursuance thereof, the impugned order has been passed directing the petitioner to pay 20% of the total demand, being condition precedent for grant of stay. The petitioner is aggrieved by such condition by stating that they did not have adequate opportunity to put forth their case and the first respondent ought to have taken into consideration that the second respondent was solely guided by the third party evidence and came to the conclusion that the petitioner has purchased the property for a lesser price. Further, the statement referred to by the second respondent does not implicate the petitioner in any manner and therefore, the assessment has been made based on presumptions and assumptions.

4. I have heard the learned senior standing counsel for the respondents on the above submissions.

5. The contentions advanced by the petitioner with regard to the merits of the assessment have to be agitated before the Appellate Authority in the pending appeals. All that is required to be seen is that pending disposal of the appeal, the interest of revenue should be sufficiently safeguarded.

6. The assessment itself was pursuant to a search and seizure operation. Statements have been recorded from the third parties. The second respondent concluded that there is gross undervaluation of the value of the property. In such circumstances, this Court is of the view that the petitioner should be put on stringent condition for being entitled to an order of interim stay. Learned counsel for the petitioner placed reliance on the decision of this Court in GMV Projects & Systems Vs. Assistant Commissioner of Income Tax, Circle 15(1) Chennai [2017] 84 Taxmann.com 14 (Madras). In the said case, the Court, while considering the correctness of the order passed in the stay petition, on facts was convinced that the entire demand of tax should be stayed till the appeals are disposed of. As noticed before, the instant case is one of search and seizure

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and pertains to valuation of the property and certain records were relied on by the Assessing Officer to make the subject assessment. Therefore, this Court is of the view that the petitioners should be put on condition for being entitled to grant of stay. It is submitted by the learned counsel that total tax liability in respect of the four petitioners is Rs.3,03,28,295/- and interest of revenue would be safeguarded if 15% of the tax demand is directed to be paid by the petitioners. 15% of the said amount works out to Rs.45,49,244/- out of which 8 lakhs has already been recovered. Hence, there will be a direction to the petitioners to pay Rs.37,49,244/- for being entitled to a grant of stay. The payment shall be effected in one lump sum or installments within a period of 12 weeks from the date of receipt of a copy of this order.

These writ petitions are disposed of with the above directions. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

gpa

To

1. The Commissioner of Income Tax, (Appeals) -18
   121, Mahatma Gandhi Road
   Nungambakkam, Chennai- 600 034

2. The Deputy Commissioner of Income Tax
   Central Circle-III (i/c)
   Coimbatore

3. The Assistant Commissioner of Income Tax
   Central Circle - III
   63, Race Course Road
   Coimbatore

+1cc to Mr.B.Raveendran, Advocate, S.R.No.75055
+1cc to Mr.A.P.Srinivas, Advocate, S.R.No.75431

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CA(07/11/2017)

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