IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.11.2017

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THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

Writ Petition No.27898 of 2017
and
W.M.P. Nos.29922 & 29923 of 2017

S.Arputharaj ...Petitioner

Vs.

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

2. Tax Recovery Officer, Central-2,
   Income Tax Department, Room No.322
   3rd Floor, New No.46,
   MG Road, Chennai - 600 034.

3. The Commissioner of Income Tax,
   Appeals-18, Chennai - 600 034. ...Respondents

Prayer: The writ petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, calling for the records relating to impugned Demand Notice in TRC.No.80-86/CR-2/2016-17 dated 18.08.2017, issued by the second respondent and quash the same and pass orders.

For Petitioner : Mr.P.J. Rishikesh for Mr.N.Sankarasabari
For Respondent : Mr.A.P.Srinivas

O R D E R

Heard Mr.P.J.Rishikesh, learned counsel appearing for Mr.N.Sankaransabari, learned counsel on record for the petitioner and Mr.A.P.Srinivas, learned Standing Counsel accepting notice for the respondents. By consent on either side, the writ petition itself is taken up for final disposal.

2. The petitioner has impugned a communication sent by the Tax Recovery Officer, Central Circle No.2, Chennai - the second respondent herein intimating the petitioner with regard to the requested for stay of the demand raised in respect of the assessment years 2009-2010 to 2015-16 till the disposal of the

first appeals before the Commissioner of Income Tax (Appeals)-18. It has been stated that as per partial modification of CBDT instruction No.1914 dated 21.03.1996, modified on 31.07.2017, providing guidelines for stay of the demand at the first appellate stage, the petitioner has to pay 20% of the disputed demand and file stay petition before the Assessing Officer. Therefore, the second respondent informed the petitioner that he cannot consider the petitioner's request for stay.

3. Admittedly, the Tax Recovery Officer cannot grant stay of the order of assessment and the remedy lies only before the Assessing Officer or before the First Appellate Authority. The petitioner ought to have pursued the matter before the Assessing Officer or the First Appellate Authority. From the typed set of papers, it is seen that the petitioner presented the stay petitions dated 15.3.2017 before the Assessing Officer - the first respondent herein on 21.03.2017 and these stay petitions are still pending.

4. In the meantime, the petitioner parallely moved the second respondent - the Tax Recovery Officer seeking for a similar prayer, which has now been declined by the impugned proceedings stating that he is not the officer, who can grant such a relief. Thus, when the stay petitions are pending before the Assessing Officer, the petitioner has to pursue the same by appearing before him and make a request for stay of the demand as assessed by him.

5. The petitioner's case is that four of his properties have been attached under section 281B of the Income Tax Act,1961 by order dated 15.12.2016 and the fifth property has been attached by order dated 05.10.2017 and these properties would be sufficient to safeguard the interests of the Revenue till the disposal of the appeals before the First Appellate Authority - the third respondent herein. Further, it is contented that the modified instructions of the Central Board of Direct Taxes cannot be made applicable to the petitioner, since the stay petitions have been filed much earlier i.e on 21.03.2017.

6. However, this Court does not propose to render any findings on the said contention, since the matter is yet to be decided by the first respondent. The official memorandum issued by the Central Board of Direct Taxes dated 29.02.2016 contains certain guidelines to streamline the process of grant of stay and standardize the quantum of lump sum payment required to the made by the assessee as a precondition for stay of demand disputed before the Commissioner of Income Tax (Appeals). As per the said guidelines under Clause A, the Assessing Officer shall grant stay of the demand till the disposal of the first appeal on payment of 15%. Clause B of the memorandum deals with two types of situations namely where the Assessing Officer is of the

view that the lump sum payment amount should be higher than 15% and the other category being where the Assessing Officer is of the view that such lump sum payment must be lower than 15%. Therefore, the Assessing Officer has to consider the case on merits and then take a decision in the matter and not mechanically go by the guidelines issued by the Central Board of Direct Taxes, as the guidelines themselves provide for contingencies, which may vary from case to case.

7. The learned counsel for the petitioner would submit that the stay petitions dated 15.03.2017 presented before the first respondent on 21.03.2017 do not contain full details and seeks leave of this Court to file additional grounds to the stay petitions and pursue the matter before the first respondent.

8. Thus, considering the above factual position, the writ petition is disposed of by directing the petitioner to raise additional grounds before the first respondent in support of their stay petitions dated 15.03.2017 received on 21.03.2017 in the office of the Deputy Commissioner of Income Tax, Central Circle-I, Coimbatore, within a period of one week from the date of receipt of a copy of this order. On receipt of such additional grounds, the first respondent shall afford an opportunity of personal hearing to the authorized representative of the petitioner and pass orders on merits and in accordance with law on the stay petitions as expeditiously as possible, preferably within a period of three weeks from the date, on which, personal hearing is concluded. Till such time, the respondents shall not initiate any coercive action against the petitioner. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

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

2. Tax Recovery Officer, Central-2,
Income Tax Department, Room No.322
3rd Floor, New No.46,
MG Road, Chennai - 600 034.

3. The Commissioner of Income Tax,
Appeals-18, Chennai - 600 034.

+1 cc to Mr.A.P.Srinivas Advocate sr 78131
+1 cc to Mr.N.Sankara Sabari Advocate sr 77600

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