IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Special Original Jurisdiction)

Tuesday, the Sixth day of February Two Thousand Eighteen

PRESENT

THE HON`BLE MR JUSTICE T. S. SIVAGNANAM

WMP NO.3041 OF 2018

IN WP.2489/2018

MR.KAVIN KUMAR KANDASWAMY [PETITIONER]
NO.82, CAR STREET, ANTHIYUR, BHAVANI TALUK,
ERODE DISTRICT- 636 501

Vs

1 THE CHIEF COMMISSIONER OF [RESPONDENTS]
INCOME TAX, COIMBATORE REGION INCOME TAX
DEPARTMENT, 4TH FLOOR, ANNEX BUILDING, NO.63,
RACE COURSE ROAD, COIMBATORE- 641 018

2 THE PRINCIPAL COMMISSIONER OF
INCOME TAX-2 INCOME TAX DEPARTMENT, 2ND
FLOOR, ANNEX BUILDING, NO.63, RACE COURSE
ROAD, COIMBATORE- 641 018

3 THE JOINT COMMISSIONER OF
INCOME TAX NON CORPORATE RANGE-3 INCOME TAX
DEPARTMENT, ANNEX BUILDING, NO.63, RACE
COURSE ROAD, COIMBATORE- 641 018

4 THE INCOME TAX OFFICER
WARD-2, INCOME TAX DEPARTMENT, CHRISTO
BUILDIKING, 2ND FLOOR, STATE BANK ROAD,
OOTACAMUND- 643 001

Petition praying that in the circumstances stated therein and in the affidavit filed therewith the High Court will be pleased to grant interim injunction restraining the Respondents from recovering the disputed amount from the Writ Petitioner for the tax arrears relating to the Assessment Year 2015-16 consequent to the impugned notice/ order in PAN.AXSPK 2172N/W -2/ 2017-18 dated 8.12.2017 (in WMP.3041/2018) pending disposal of this writ petition.2489/2018

Order : This petition coming on for orders upon perusing the petition and the affidavit filed in support thereof and upon hearing the arguments of M/S.S.SRIDHAR, Advocate for the petitioner and of MR.A.P.SRINIVAS, Senior Standing Counsel on behalf of the Respondents the court made the following order:-

Heard the learned counsel for the petitioner.

2. The impugned proceedings is a notice under Section 226(3) of the Income Tax Act, 1961 dated 08.12.2017 issued in the name of the petitioner - Mr.Kavin Kumar Kandasamy, S/O Mr.C.K.Kandasamy. In the said notice, the petitioner has been called upon to pay a sum of Rs.5 Crores, which is stated to be due from one M/s.Riverside Public School Group Cases, Kotagiri. He has also been called upon to pay the said amount within 30 days.

3. The petitioner sent a reply dated 04.1.2018 to the said notice pointing out certain factual details and mentioning that the presumption that the petitioner is liable to pay the said sum, which is due from the said M/s.Riverside Public School is incorrect, not proper and without appreciating the facts of the case and the balance sheet of M/s.KKK Management and Edu Services Private Limited shows that Mr.Suresh Belliraj (assessee in default) is an unsecured creditor and a sum of Rs.49,89,000/- is payable by the said M/s.KKK Management and Edu Services Private Limited as on 31.3.2016. Therefore, it is submitted that no such liability can be fastened on the petitioner. Furthermore, it is pointed out that crystallization of liability would take place on fulfillment of certain contractual obligations on or before 23.8.2019.

4. On receipt of the reply from the petitioner, the respondent sent a communication dated 04.1.2018. Curiously, the fourth respondent addressed to Mr.Kavinkumar Kandasamy in the capacity of Managing Director of M/s.KKK Management and Edu Services Private Limited and not in his personal capacity. Furthermore, the fourth respondent took a slightly different stand in the reply dated 04.1.2018 stating that Rs.5 Crores, which is payable to the said Mr.Suresh Belliraj by the said M/s.KKK Management and Edu Services Private Limited, Anthiyur represented by the petitioner herein, is still pending. It has been further stated that as per the office records, the petitioner's representation dated 04.1.2018 cannot be considered favourably. The fourth respondent also directed the petitioner to pay the said sum of Rs.5 Crores while holding that the notice issued under Section 226(3) of the said Act dated 08.12.2017 is proper.

5. Prima facie, this Court finds glaring errors, which are apparent on the faced of the impugned notice as well as the communication dated 04.1.2018.

6. Mr.A.P.Srinivas, learned Senior Standing Counsel, accepting notice for the respondents, points out that the Court cannot make a roving enquiry at this stage and that the Department is entitled to issue notice to any person for recovery of tax dues by invoking the power under Section 226 of the said Act, which deals with other modes of recovery. It is further submitted that Sub-Section (3) of Section 226 of the said Act empowers the respondent Department to issue the impugned notice and it is for the petitioner to explain to the satisfaction of the officer that he is not liable to pay any money.

7. Prima facie, this Court is unable to countenance the said submission because of the language employed in Section 226(3)(iii) of the said Act and it is required to state that money is due and payable to the assessee in default or may become due and payable to the assessee in default. The impugned notice does not clearly state as to how the petitioner, in personal capacity, is due and payable when M/s.KKK Management and Edu Services Private Limited reflected the debt in their balance sheet as on 31.3.2016. Furthermore, as pointed out earlier, in the communication dated 04.1.2018, the fourth respondent took factually a different stand stating that the company is represented by the petitioner and that the company is due and liable to pay. If that be the case, then the impugned notice issued under Section 226(3) of the said Act could not have been issued in the name of the petitioner.

8. In the light of the above, there will be an order of interim injunction as prayed for till the disposal of the writ petition. The above WMP is disposed of. <u>The respondents shall file their counter to the writ petition justifying the issuance of notice in the name of the petitioner in personal capacity. List the writ petition on 08.3.2018.</u>

-sd/-
06/02/2018

/ TRUE COPY /

Sub Assistant Registrar (Statistics / C.S.)
High Court, Madras - 600 104.

TO

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C.C. to M/S.S.SRIDHAR Advocate Sr.No.1406

Order

in
WMP.3041/2018

in
WP.2489/2018

Date :06/02/2018

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