IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.04.2018

CORAM

THE HON'BLE MR. JUSTICE T.S.SIVAGNANAM

W.P.No.8113 of 2018 &
W.M.P. Nos.10088 to 10090 of 2018

M/s.S.P.Mani & Mohan Dairy
Represented by its Managing Partner
84, Jeevanantham Street
Kollampalayam
Erode - 638 002
PAN No.AAKFS5133J ...Petitioner

v.

1.The Assistant Commissioner of Income Tax
Circle - 1
Erode - 638 001

2.The Chief Manager
Canara Bank
Cutchery Road
V.H. Road
Erode - 638 001

3.The Manager (Finance)
M/s.S.P. Mani & Mohan Dairy India (P) Ltd.
S.F.No.1770/1, 2, 1781/1, 1786/7 Kulur Road
Kathakinaru Village
Aval Poondurai Road
Erode - 638 004 ...Respondents

Writ 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 1st respondent herein in PAN No.AAKFS5133J and quash the proceedings dated 26.03.2018 passed therein and issued to the 2nd respondent further direct the 1st respondent to lift the order of bank attachment issued to the 2nd respondent and further direct the 1st respondent to withdraw the garnishee proceedings issued to the 3rd respondent dated 26.3.2018.

For Petitioner : Mr.R.L.Ramani, Senior Counsel
for Mr.B.Raveendran

For Respondent : Mr.A.P.Srinivas &
Mr.A.N.R.Jayaprathap
Standing Counsel - for R1

No appearance for R2 & R3

ORDER

Mr.A.P.Srinivas, learned Standing Counsel accepts notice for the 1st respondent. By consent, the writ petition itself is taken up for final disposal.

2. The petitioner is before this court challenging the notice issued under section 226(3) of the Income Tax Act, 1961 addressed to the petitioner's bankers, viz., Canara Bank, Cutchery Road, V.H. Road, Erode, stating that the the petitioner is due and payable a sum of Rs.6,82,18,782/-. Earlier, a notice was issued to the petitioner dated 26.03.2018, wherein, a payment of Rs.4,61,50,180/- was made. It appears that this amount had increased to Rs.6,82,18,782/- on account of the tax payable by the petitioner in respect of other assessment years other than the assessment year, viz., 2014-15.

3.The case of the petitioner is that as against the order passed by the Commissioner of Income Tax (Appeals)-III, Coimbatore, dated 14.02.2018, the petitioner has 30 days time from the date of receipt of the copy of the order to prefer an appeal before the Income Tax Appellate Tribunal (ITAT). The petitioner states that the order passed by the Commissioner of Income Tax (Appeals)-III, Coimbatore was served on the petitioner on 01.03.2018 and the last date for filing of an appeal before the Tribunal is 30.04.2018 and before the expiry of the said date, the 1st respondent/Assessing Officer could not have initiated the recovery proceeding by issuing an impugned notice under section 226(3) of the Income Tax Act, 1961. In support of the said contention, reliance is placed on the judgment of this court in the case of M/s.Rapid Care Transcription P. Ltd., Chennai v. The Income tax Officer, Chennai in W.P.No.33765 of 2017, dated 22.12.2017. Therefore, it is submitted that the impugned notice is liable to be set aside.

4. The Standing Counsel appearing for the 1st respondent sought to sustain the impugned notice by submitting that after the order passed by the Tribunal, the petitioner was informed in the meeting held on 08.03.2018 that only if an appeal is preferred to the Tribunal, then the Assessing Officer can

consider the prayer for stay and as long as appeal has not been filed, the Assessing Officer is entitled to issue a demand by giving effect to the order passed by the Commissioner of Income Tax (Appeals). It is pointed out that after such a communication was sent to the petitioner on 13.03.2018, the petitioner filed a petition for rectification under section 154 of the Income Tax Act, 1961 on 22.03.2018, after giving effect to the order dated 07.03.2018. Therefore, it is submitted that there is no error in the impugned notice.

5. Heard Mr.R.L.Ramani, learned Senior Counsel, appearing for the petitioner and Mr.A.P.Srinivas, learned Standing Counsel appearing for the 1st respondent.

6. The issue raised for consideration in this writ petition is whether the 1st respondent was justified in issuing notice under section 226(3) of the Income Tax Act, 1961?

7. Admittedly, on the date when the notice was issued, the petitioner has not preferred an appeal to the Income Tax Appellate Tribunal (ITAT) against the order passed by the Commissioner of Income Tax (Appeals)-III, Coimbatore, dated 14.02.2018. The limitation for filing the appeal expires only on 30.04.2018. Therefore, the 1st respondent would not have directed the petitioner to remit the entire tax well before the expiry of the limitation period for filing an appeal. However, this may not be very broad proposition, as in certain cases, the concerned individual may not even file an appeal and would be willing to accept the order passed by the Appellate Authority. However, in the instant case, the petitioner is in the position of filing an appeal and they seek to set aside the finding rendered by the Commissioner of Income Tax (Appeals)-III, Coimbatore only on one issue, viz., with regard to the disallowance of additional depreciation, totalling Rs.66,35,246/- on building, plant and machinery in respect of two milk chilling plant commissioned at Aayilpatti and Karur and the Assessing officer disallowed the same observing that the assets were not put to use during the year. Thus, following the factual position, this court is inclined to grant interim protection to the petitioner till they approach Income Tax Appellate Tribunal (ITAT) by way of an appeal and such interim protection shall be subject to a condition.

8. Accordingly, the impugned notice shall remain stayed subject to the condition that the petitioner pays 20% of the the disputed tax on the additional depreciation claimed under section 32(1)(iia) of the Act on the sum of Rs.66,35,246/- and such payment shall be made, within one week from the date of receipt of a copy of this order. Subject to compliance of the said condition, attachment of the the petitioner's bank account shall stand lifted. The petitioner is at liberty to file an

appeal before the Income Tax Appellate Tribunal (ITAT) and seek for an appropriate prayer. In the event the petitioner fails to comply with the condition imposed in this order, the benefit of this order will not enure to the petitioner. It is made clear that the Income Tax Appellate Tribunal (ITAT) shall decide the stay petition to be filed by the petitioner in accordance with law and while deciding the stay petition, shall take note of the payment which has been directed to be remitted by the petitioner.

The writ petition is disposed of accordingly. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

rj

To

1.The Assistant Commissioner of Income Tax
Circle - 1
Erode - 638 001

2.The Registrar
Income Tax Appellate Tribunal,
Chennai.

+1cc to Mr.A.P.Srinivas, Advocate, S.R.No.25708

+1cc to Mr.B.Raveendran, Advocate, S.R.No.25535

W.P.No.8113 of 2018 &
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AK(CO)

RRK(11/04/2018)