IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.11.2018

CORAM

THE HON'BLE MR. JUSTICE K.RAVICHANDRABAABU

W.P.No.6321 of 2018
and
W.M.P.Nos.7813 & 7814 of 2018

Mr.Kishore Chataram Nanwani ... Petitioner

vs.

1. Office of the Tax Recovery Officer,
Income Tax Department,
D.P.Thottam, Muthaialpet,
Pondicherry 605 003.

2. The Income Tax Officer,
Ward – I (1), Pondicherry.

3. The Commissioner of Income Tax (Appeals),
D.P.Thottam, Muthaialpet,
Pondicherry 605 003 ... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari to call for the records of the first respondent in TRC No.424 & 512/TRO/17-18 dated 27.02.2018 and quash the same.

For Petitioner : Mr.P.J.Sri Ganesh
for Mr.M.Jayaprakash

For Respondents : Mr.A.P.Srinivas
Standing Counsel

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O R D E R

The petitioner is aggrieved against the proceedings of the first respondent dated 27.02.2018, in issuing the proclamation of sale of the property shown in the schedule to the proceedings, for the recovery of the sum of Rs.1,04,79,418/- from the petitioner.

2. The case of the petitioner, in short, is as follows:
Orders of assessment for the assessment years 2008-09 and

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2009-10 were passed on 30.12.2010 and 30.12.2011, fixing the total tax liability payable by the petitioner as Rs.19,41,402/- and Rs.36,66,921/- respectively. The petitioner went on appeal before the Commissioner of Income Tax (Appeals). The Appellate Authority, by order dated 28.03.2014, partly allowed the appeals and computed an unaccounted income in respect of assessment year 2008-09 as Rs.21,12,002/- and in respect of assessment year 2009-10 as Rs.18,61,505/-. Giving effect orders were passed on 20.05.2014 and 21.05.2014, demanding a sum of Rs.10,32,908/-+ Rs.8,17,887/-+Rs.38,72,006/-. Aggrieved against the said order of the Appellate Authority, the Revenue went on appeal before the Income Tax Appellate Tribunal and those appeals were dismissed on 17.03.2015. Further, Tax Case Appeals filed before this Court by the Revenue in Tax Case Appeal No.211/2016 is pending. While so, the present impugned proceedings was issued based on the original order passed by the Assessing Authority without realising the fact that the said order has been modified by the Appellate Authority as stated supra.

3. The respondents filed counter affidavit wherein it is stated that subsequently an order imposing penalty on the petitioner was also passed and therefore, the amount claimed in the impugned proceedings is appropriate.

4. The learned counsel for the petitioner, after reiterating the contentions raised by the petitioner in the affidavit filed in support of the petition, invited this Court's attention to the impugned proceedings to contend that the same cannot be sustained, since it was passed based on the order of the Assessing Authority while the same got modified already by the Appellate Authority. Therefore, he contended that the basis for issuing proclamation for sale itself is factually erroneous.

5. On the other hand, Mr.A.P.Srinivas, learned Standing Counsel for the respondents contended that as the petitioner is liable to pay penalty also, the amount referred to in the proclamation of sale is not erroneous. However, he fairly admitted to the position that the impugned proclamation of sale was issued based on the order passed by the Assessing Authority, even though, in the mean time, the said order was modified by the first Appellate Authority, namely the Commissioner of Income Tax (Appeals).

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6. Perusal of the impugned proclamation of sale would show that the amount sought to be recovered from the petitioner, namely Rs.1,04,79,418/- was based on the certificates issued on 30.01.2012 and 22.03.2012, in pursuant to the order passed by the Assessing Authority. Admittedly, this proclamation of sale was issued on 27.02.2018, by which time much water has flown in the subject matter, as the appeal filed by the petitioner before

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the Commissioner of Income Tax (Appeals) was allowed in part thereby, modifying the order of the Assessing Authority as stated supra.

7. It is further seen that the Revenue has gone on appeal before the Tribunal against the order of the Appellate Authority and such appeal was dismissed. It is true that further appeal filed by the Revenue before this Court is pending. However, the fact remains that the order passed by the Assessing Authority having been modified by the first Appellate Authority, any further proceedings to recover the amount from the petitioner in the meantime, has to be drawn based on the order passed by the first Appellate Authority and not based on the order passed by the Assessing Authority. Therefore, I find that passing of the impugned proceedings, based on the order passed by the Assessing Authority, cannot be sustained. However, it is open to the Revenue to issue fresh certificate based on the order passed by the first Appellate Authority as well as any other assessment order and arrears if any, passed in respect of the very same year and proceed further accordingly, however, without prejudice to the contentions raised in the appeal pending before this Court.

8. Accordingly, this writ petition is allowed and the impugned proceedings is set aside by granting liberty to the respondents to proceed to recover the amount due from the petitioner based on the order passed by the first Appellate Authority, namely Commissioner of Income Tax (Appeals) and any other assessment order passed in respect of the very same assessment year by issuing appropriate proceedings against the petitioner. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

sni/vsi

To

1. Office of the Tax Recovery Officer,
   Income Tax Department,
   D.P.Thottam, Muthaialpet,
   Pondicherry 605 003.

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2. The Income Tax Officer,
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3. The Commissioner of Income Tax (Appeals),
D.P.Thottam, Muthaialpet,
Pondicherry 605 003

+1 cc to Mr.M.Jayaprakash, Advocate Sr.No.77218
+1 cc to Mr.A.P.Srinivas, Advocate Sr.No.77152

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