IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 03.04.2018

Coram

The Hon'ble Mr.Justice T.S.Sivagnanam

Writ Petition No.7456 of 2018
and
W.M.P.Nos.9280 and 9281 of 2018

Smt. Lakshmi Gayathri Aravapalli,
Proprietrix, M/s. Srinivasa Chemicals Enterprises,
No.11/6, Pappathi Ammal Street,
Kodambakkam, Chennai - 600 024. ...Petitioner

Vs.

1. The Commissioner of Income Tax (Appeals) -14,
Room No.217, II Floor,
No.46, Nungambakkam High Road,
Chennai - 600 034.

2. The Office of the Tax Recovery Officer
Central-I, Room No.321, III Floor,
No.46, Nungambakkam High Road,
Chennai - 600 034. ...Respondents

Writ Petition, filed under Article 226 of the Constitution of India, for issuance of Writ of Certiorarified Mandamus to call for records, pertaining to the order passed by the second respondent, Tax Recovery Officer, Central-I, Chennai - 600 034, under Section 226 (3) of the Income Tax Act, 1961, bearing Reference No.TRC : 81/C. C-1 (2)/2017-18, dated 19.03.2018, and to forbear the respondent from taking coercive action against the petitioner for recovery of scrutiny demand for the assessment years 2012-13 and 2013-14, till the disposal of the Appeal No.ITA.73/15-16 and ITA 162/16-17, pending on the file of the first respondent, the Commissioner of Income Tax (Appeals) -14, Chennai - 34.

For Petitioner : Mr.Ravi for M/s. Gupta Ravi

For Respondent : Mr.A.N.R. Jayaprathap

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O R D E R

Heard Mr.Ravi, for M/s.Gupta and Ravi, the learned counsel appearing for the petitioner and Mr.A.N.R.Jayaprathap, the learned counsel accepting notice on behalf of the respondents. With consent of the learned counsel on either side, the Writ Petition is taken up for disposal.

2. The petitioner has filed this Writ Petition, challenging the notice issued by the second respondent under Section 226 (3) of the Income Tax Act, 1961 (the Act, for brevity), dated 19.03.2018. Soon after the issuance of the impugned notice, the second respondent has recovered a sum of Rs.57,48,000/- by attaching the petitioner's bank account, being roughly 20% of the tax demand, being Rs.4,29,03,387/-as demanded in the notice, dated 05.02.2018.

3. The learned counsel appearing for the petitioner would submit that, the issue, which arises for consideration in regard to the impugned assessment order for the years 2012-13 and 2013-14, is identical to that of the issue, which arisen for the assessment years 2006-07 to 2010-11. It is further submitted that, for the assessment years, 2006-07 to 2010-11, the assessee has succeeded and the Department has preferred Appeal to the Income Tax Appellate Tribunal. Though the petitioner was successful for the assessment years 2006-07 to 2010-11, for the impugned assessment orders, for the years 2012-13 and 2013-14, the Assessing Officer has held otherwise and the assessee has preferred Appeal before the Commissioner of Income Tax (Appeals)-V, Chennai [CIT (Appeals)] and the Appeal is pending. In the pending Appeal, the petitioner has moved a Stay Petition before the CIT (Appeals). Both the Appeal as also the Stay Petition have not been disposed of. In the meantime, the impugned notice has been issued for recovery of the tax amount by way of attaching the petitioner's bank account. The learned counsel pointed out that, without disposing of the Stay Petition, the disputed tax amount cannot be directed to be paid. It is further submitted that, the petitioner's Chartered Accountant has made a representation to the first respondent/CIT (Appeals), requesting for adjournment of the Appeals to 15.04.2018. Till date, no orders have been passed based on the representation, on the contrary, the second respondent, viz., Tax Recovery Officer has recovered a sum of Rs.57,48,000/- from the petitioner's bank account.

4. Considering the fact that the Stay Petition has not been disposed of and the Appeal itself now stood adjourned to two months, as certain particulars have been sought for by the Appellate Authority, the remaining amount of tax demanded from

the petitioner, pursuant to the impugned order for the assessment years 2012-13 and 2013-14, shall remain stayed till the disposal of the Appeal by the first respondent. No costs. Consequently, connected Writ Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

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To

1. The Commissioner of Income Tax (Appeals) -14,
Room No.217, II Floor,
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Chennai - 600 034.

2. The Office of the Tax Recovery Officer
Central-I, Room No.321, III Floor,
No.46, Nungambakkam High Road,
Chennai - 600 034.

+1cc to Mr.Gupta and Ravi, Advocate, S.R.No.24581

+1cc to Mr.A.P.Srinivas, Advocate, S.R.No.24932

Writ Petition No.7456 of 2018

RSY(CO)

RRK(16/04/2018)