IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 03.04.2018

Coram

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

Writ Petition No.7709 of 2018
and
W.M.P.No.9612 of 2018

Swami Arvind ...Petitioner

Vs.

1.Assistant Commissioner of Income Tax
Income Tax Department
AC IT Non-Corp. Circle 20 (1) Chennai
311, III Floor, Annexe Building
No.121, Mahatma Gandhi Road
Nungambakkam, Chennai 600 034

2.The Principal Chief Commissioner of Income Tax
Tamilnadu and Puducherry
No.121, Mahatma Gandhi Road
Nungambakkam
Chennai 600 034

3.The Manager
HDFC Bank
759, ITC Centre
Anna Salai
Opp. T.V.S. Chennai 600 002 ...Respondents

Writ Petition, filed under Article 226 of the Constitution of India, for issuance of Writ of Certiorari calling for the records of the 1st respondent pertaining to the impugned notice dated 26.03.2018 under Section 226 (3) of the Income-tax Act, 1961 vide PAN:AABPA5519R/ACIT/NCC-20(1)/CHN issued by the 1st respondent herein, issued to the 3rd respondent under copy to me, and quash the same.

For Petitioner : Mr.P.S.Raman, Senior Counsel
for Mr.T.K.Bhaskar

For Respondents 1 and2 : Mrs. Hema Murali Krishnan
Senior Standing Counsel

O R D E R

Heard Mr.P.S.Raman, the learned Senior Counsel for M/s.T.K.Bhaskar, the learned counsel appearing for the petitioner and Mrs.Hema Murali Krishnan, the learned Senior Standing Counsel, accepting notice on behalf of the respondents. In the light of the order, this Court proposes to pass, notice to the third respondent/Bank is dispensed with.

2. The petitioner is aggrieved by the notice issued under Section 226 (3) of the Income Tax Act, 1961, (hereinafter, referred to as 'the Act') addressed to the petitioner's bankers, viz., the third respondent, stating that the petitioner is due and payable of a sum of Rs.96,41,650/-, being the income tax for the AY 2018-19.

3. The facts, which lead to the issuance of the impugned notice are that:-

i) The first respondent issued a notice, dated 09.02.2018 under Section 156 of the Act, for payment of advance tax under Section 210 (3)/(4) of the Act. Along with the said notice, an order under Section 210 of the Act was enclosed, stating that net tax payable by the petitioner is Rs.1,26,41,650/-. In terms of the said notice, dated 09.02.2018, if the petitioner was required to pay the amount less than the amount, which he is so required to pay, he has to send to the Assessing Officer, in Form 28 A, the reasons for the lower estimate made by the petitioner and enclose an estimate of the advance tax so payable on such income calculated in the manner laid down in Section 209.

ii) The petitioner would state that, on receipt of the impugned notice, he had paid further advance tax of Rs.30,00,000/- and intimated the first respondent through their authorized Chartered Accountant, via., e-mail on 15.03.2018. However, the fact remains that the petitioner did not file Form 28 A, as mentioned in the notice, dated 09.02.2018. Therefore, the first respondent cannot be faulted for having proceeded to issue the impugned notice under Section 226 (3) of the Act, proposing to attach the petitioner's bank account, and recover the entire amount of tax, as estimated by them, in the order, dated 09.02.2018. However, the petitioner on 31.03.2018, has filed Form 28A, and it is stated that the Chartered Accountant of the petitioner presented the said Form in person to the first respondent and has produced the Office copy of the Chartered Accountant's letter, where, the first respondent is stated to have acknowledged the receipt of Form 28 A.

4. The learned Senior Counsel for the petitioner points that already excess amount of advance tax to the tune of Rs.1,55,00,000/- has been remitted by the petitioner and this has been mentioned in the Form 28 A.

5. The learned Senior Standing Counsel for the Revenue points that, on the date of the remittance of a sum of Rs.30,00,000/- the petitioner has not filed any Form 28 A. Had the Form 28 A been filed, appropriate action would have been initiated based on such information furnished in the Form 28 A. Therefore, the first respondent cannot be faulted for having issued the impugned notice under Section 226 (3) of the Act.

6. As pointed out earlier, the petitioner has to be partly blamed, because, while remitting the further advance tax of Rs.30,00,000/- he ought to have filed Form 28 A. In any event, as on date, Form 28 A has been filed before the first respondent. Therefore, the said Form 28 A should be considered by the first respondent and decision be taken on merits and in accordance with law. However, in the meantime, the question of recovery of Rs.96,41,650/- by attaching the petitioner's bank account does not arise and the notice under Section 226(3) dated 26.03.2018 should remain suspended.

7. In the result, the Writ Petition is disposed of, by directing the first respondent to consider the petitioner's Form 28 A, being the intimation to the Assessing Officer under Section 210 (5), regarding the notice of demand issued under Section 156 of the Income Tax Act, 1961, dated 09.02.2018 and pass appropriate orders on merits and in accordance with law, after affording an opportunity of personal hearing to the Authorized Representative of the petitioner. Till a decision has been taken by the first respondent in regard to the Form 28 A, the impugned notice, dated 26.03.2018 shall not be given effect to. No costs. Consequently, connected Writ Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

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To

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+1cc to Mrs.Hema Murali Krishnan, Advocate, S.R.No.24697

+1cc to Mr.T.K.Bhaskar, Advocate,S.R.No.24655

W.P.No.7709 of 2018

RRK(09/04/2018)