IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.07.2018

CORAM :

The Hon'ble Mr.JUSTICE T.S.SIVAGNANAM
AND
The Hon'ble Mrs.JUSTICE V.BHAVANI SUBBAROYAN

W.P. No.5897 of 2018

R.Ramesh .. Petitioner

-vs-

1.The Deputy Director of Investigations,
Office of the Deputy Director of Income Tax (Inv.), No.3, Gandhi Road,
Salem 636 007.

2.The Assistant Commissioner of Income Tax,
Circle-1, Salem.

3.The Assistant Commissioner of Income Tax (Benami Prohibition), Initiating Officer,
Room No.104, Income Tax Investigation Wing Building, 1st Floor, 46, Mahatma Gandhi Road, Nungambakkam, Chennai-600 034.

4.The Principal Commissioner of Income Tax,
Office of the Income Tax Department,
Salem.

5.The Joint Director of Income Tax (Investigation)
Office of the Income Tax Department,
Coimbatore.

6.The Assistant Director of Investigations,
Office of the Income Tax Department,
Salem.

7.The Adjudicating Authority under the
Prohibition of Benami Property
Transactions Act, 1988, Room No.26,
4th Floor, Jeevan Deep Building,
Parliament Street, New Delhi 110 001.
(7th respondent impleaded as per order
of Court dt.04.07.2018 in WMP.No.
19320 of 2018) .. Respondents

Petition filed under Article 226 of the Constitution of India praying for issue of Writ of Declaration to declare that Section 24(1) read with Section 2 (9) of The Prohibition of Benami Property Transactions Act, 1988 and the Income Tax Act, 1961, being mutually exclusive, with regard to the same transaction, there cannot be proceedings under both the Prohibition of Benami Property Transactions Act, 1988 and the Income Tax Act, 1961 and consequentially, forbear the respondents from initiating and proceeding further under the two enactments with regard to the same transaction.

For Petitioner : Mr.N.Murali Kumaran
for M/s.Mc. Gan Law Firm

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

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O R D E R
(Made by T.S.Sivagnanam, J.)

Heard Mr.N.Muralikumaran, learned counsel representing M/s.Mc. Gan Law Firm, for the petitioner and Mr.A.N.R.Jayaprathap, learned standing counsel for the respondent/Department.

2.The petitioner has filed this writ petition praying for a writ of declaration declaring Section 24(1) read with Section 2 (9) of the Prohibition of Benami Property Transactions Act, 1988 and Income Tax Act, 1961, being mutually exclusive and with regard to the same transaction, there cannot be proceedings under both the Acts and consequently, to forbear the respondents from initiating and proceeding further under the two enactments.

3.The case was listed for admission on 16.03.2018 and has been adjourned from time to time.

4.The learned counsel appearing for the petitioner, on instructions from his client, would submit that the petitioner may be permitted to withdraw this writ petition and approach the adjudicating authority under the Benami Prohibition Act, namely, 7th respondent, by raising all contentions before the authority, including the contention advanced in this writ petition stating that proceedings under both the enactments cannot be taken up.

5.The learned standing counsel appearing for the Revenue, while not opposing the withdrawal of the writ petition, raised an objection with regard to the prayer made by the petitioner to approach the 7th respondent and raise the contention with regard to the maintainability of the proceedings under both enactments.

6.In our considered view, all questions of fact and law can be raised before an adjudicating authority. Needless to state, the adjudicating authority cannot issue a writ of declaration nor can he declare any of the provision as ultra vires or inapplicable or mutually exclusive. Therefore, the Revenue need not have any apprehension in this regard.

7.The learned counsel for the petitioner would submit that the proceedings under the Income Tax Act were initiated after the proceedings under the Benami Prohibition Act and therefore, the writ petition was filed. Hence, the petitioner may be granted leave to file an additional written submission before the 7th respondent. This prayer is not opposed by the learned standing counsel for the Revenue.

8.In the light of the above, the writ petition is dismissed, giving liberty to the petitioner to raise factual and legal contentions before the 7th respondent and they are permitted to file an additional written submission. The petitioner is granted seven (7) days time from the date of receipt of a copy of this order to file the written submissions, after which the 7th respondent shall fix a date for hearing. No costs. Consequently, W.M.P.Nos.7257, 7258 and 19320 of 2018 stand dismissed.

Sd/-
Assistant Registrar(CS-IV)

//True Copy//

Sub Assistant Registrar

sra

To

1.The Deputy Director of Investigations,
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+1cc to Mr.MCGAN LAW FIRM, Advocate, S.R.No.43277
+1cc to Mr.A.P.SRINIVAS, Advocate, S.R.No. 43713

W.P.No.5897 of 2018

TR(05/07/2018)