In the High Court of Judicature at Madras

Dated : 28.4.2018

Coram :

The Honourable Mr.Justice T.S.SIVAGNANAM

Writ Petition No.11295 of 2018 & WMP.No.13192 of 2018

Shri Ashwin Barai ...Petitioner

Vs

1.The Principal Commissioner of Income Tax, Pondicherry Income Tax Department, D.P.Thottam, Muthialpet, Pondicherry-3.

2.The Commissioner of Income Tax (Appeals) - Pondicherry, Income Tax Department, D.P.Thottam, Muthialpet, Pondicherry-3.

3.The Income Tax Officer, Ward 1, Income Tax Department, 378/386, M.G.Road, Pondicherry-1. ...Respondents

PETITION under Article 226 of The Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus to call for the records of the 1st respondent, quash the impugned order in C.No.9107/PCIT/PDY/2017-18 dated 05.4.2018 wrongly mentioned as 05.3.2018 relating to the assessment year 2015-16 and consequently direct the respondents not to proceed further in the matter of recovery of the disputed arrears pending disposal of the first appeal before the 2nd respondent.

For Petitioner : Mr.A.S.Sriraman

For Respondents : Mr.A.P.Srinivas, SSC

ORDER

Mr.A.P.Srinivas, learned Senior Standing Counsel accepts notice for the respondents. Heard both. By consent, the writ petition itself is taken up for final disposal.

2. The petitioner has filed this writ petition challenging the intimation given by the Income Tax Officer (HQ)-1, Puducherry dated 05.4.2018 stating that the petition dated 29.3.2018 submitted by the petitioner before the first respondent, seeking stay of the tax demanded pursuant to the assessment order dated 29.12.2017 pending disposal of the appeal before the second respondent, was considered and that the first respondent permitted the petitioner to deposit the balance sum of Rs.7.20 lakhs in three monthly instalments.

3. It is seen that the petitioner filed an appeal dated 29.1.2018 before the second respondent as against the assessment order dated 29.12.2017. It is also seen that initially, the petitioner filed a stay petition dated 21.2.2018 before the third respondent. Along with the stay petition dated 21.2.2018, the petitioner also enclosed copies of the books of accounts and the bank statements. The sum and substance of the contention before the third respondent was that the transactions with M/s.Hot Breads Private Limited have been recorded in the form of purchases and that the mistake occurred was an inadvertent mistake committed by the Accountant, who is suffering from chronic illness and is a very aged person. However, the third respondent, by order dated 02.3.2018, rejected the stay petition dated 21.2.2018 on the ground that mere filing of an appeal before the second respondent is not a valid reason for stay of collection. The third respondent, in the order dated 02.3.2018, further directed the petitioner to pay 20% of the demand to consider his request for stay of the demand.

4. Once again, the petitioner filed a fresh stay petition dated 29.3.2018 before the first respondent pointing out financial difficulties and also stating the prima facie case in their favour and the stay petition dated 29.3.2018 is now pending consideration before the first respondent. By then, the petitioner's bank accounts were attached and a sum of Rs.15.50 lakhs was recovered. The stay petition before the first respondent was taken up for hearing on 05.4.2018 and ultimately, the Income Tax Officer (HQ)-1, Puducherry informed the petitioner, by the order dated 05.4.2018, that the first respondent directed the petitioner to pay a further sum of Rs.7.20 lakhs.

5. The petitioner is at a loss to know as to what was the reason given by the first respondent to direct the petitioner to pay a further sum of Rs.7.20 lakhs, since it is the Income Tax Officer (HQ)-1, Puducherry, who communicated the decision of the first respondent. Further, a copy of the decision of the first respondent also has not been furnished. Unfortunately, the third respondent did not consider the submissions made by the

petitioner in the stay petition dated 21.2.2018 wherein he has stated about the facts and circumstances and he has not stated that merely because an appeal is filed before the second respondent, he should be granted stay.

6. Be that as it may, the Department already recovered a sum of Rs.15.50 lakhs, which is nearly 15% of the tax demanded and this Court is of the considered view that this would sufficiently safeguard the interest of the Revenue, more so, when considering the turnover of the dealer and also considering the fact that he is a commission agent.

7. For the above reasons, the writ petition is allowed, the impugned order is set aside and the demand of further sum of Rs.7,20,000/- (Rupees seven lakhs and twenty thousand only) is also set aside. There will be a stay of the tax demanded pursuant to the assessment order dated 29.12.2017 till the disposal of the appeal filed by the petitioner before the second respondent. No costs. Consequently, the connected WMP is closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

RS
To

1.The Principal Commissioner of Income Tax, Pondicherry Income Tax
Department, D.P.Thottam, Muthialpet, Pondicherry-3.

2.The Commissioner of Income Tax (Appeals) - Pondicherry, Income Tax
Department, D.P.Thottam, Muthialpet, Pondicherry-3.

3.The Income Tax Officer, Ward 1, Income Tax Department, 378/386, M.G.Road, Pondicherry-1.

4.The Income Tax Officer (HQ)-1, Puducherry

+1cc to Mr.S.Sridhar, Advocate Sr.32547
+1cc to Mr.A.P.Srinivas, Advocate Sr.32582

WP.No.11295 of 2018&
WMP.No.13192 of 2018

lrs[co]
srg 24/05/2018