IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.09.2018

C O R A M

THE HON'BLE Mr.JUSTICE K.RAVICHANDRABAABU

W.P.No.22107 of 2018
and
WMP No.25909 of 2018

T.R.Shanmugasundaram ...Petitioner

vs

1.The Deputy Commissioner of Income,
Central Circle -1,
Race Course Road,
Coimbatore 641 018.

2.Commissioner of Income Tax (Appeals)-19,
Nungambakkam High Road,
Chennai 600 034.

3.Office of the Tax Recovery Officer-2,
No.63, Race Course Road,
Coimbatore-18. ...Respondents

Prayer:Writ petition filed under Article 226 of the Constitution of India for issuance of a writ of certiorari to call for the records relating to the order passed by the third respondent dated 07.08.2018 attaching properties as per Form 16, Rule 48 of IInd Schedule to Income Tax Act, 1961, quash he same in so far as item 9 is concerned.

For petitioner : Mr.Niranjan Rajagopalan

For Respondents: Mr.ANR.Jayaprathap
Standing Counsel

O R D E R

The petitioner is aggrieved against the order passed by the third respondent dated 07.08.2018, wherein and whereby, nine items of properties were attached by the Tax Recovery Officer-2, Coimbatore -18, by exercising power under Section 222(1) of the Income Tax Act, 1961.

2. Heard Mr.Niranjan Rajagopalan, learned counsel for the petitioner and Mr.ANR.Jayaprathap, learned Standing Counsel for the respondents.

3. The petitioner is an assessee. In respect of the Assessment Years 2009-10 to 2015-16, assessment orders were passed on 30.12.2016. Aggrieved against such assessment orders, the petitioner preferred appeals before the second respondent on 28.01.2017. The petitioner also filed stay application before the Appellate Authority seeking stay of recovery of the tax liability imposed in the assessment orders. The Appellate Authority, by order dated 25.10.2017, rejected the stay application on the ground that 20% of the assessed tax has not been paid, while filing the appeal. The petitioner filed W.P.No.28294 of 2017 and challenged the said order of the Appellate Authority in dismissing the stay application. This Court, by order dated 13.11.2017, disposed the writ petition by modifying the order passed by the Appellate Authority by permitting the Revenue to encash the fixed deposit of Rs.95,00,000/- together with interest; directing the petitioner to furnish immovable security worth Rs.2 crores. It was also made clear in the said order that failure to furnish the second condition viz., furnishing of immovable security for a sum of Rs.2 crores, would make the order of stay stand automatically vacated. This Court also observed that the Appellate Authority can consider the disposal of the appeal at an early date. In compliance of the said order, the petitioner though complied with first condition, has however, not complied with the second condition viz., furnishing of immovable security for a sum of Rs.2 crores. This has resulted in passing the impugned order of attachment dated 07.08.2018, attaching 9 items of properties, as detailed therein.

4. The grievance of the petitioner before this Court is that out of nine items, when Item Nos.1 to 7 are sufficient enough to safeguard the interest of the Revenue, as the value of those properties exceeds more than Rs.2 crores as per the market value, attaching the other two sets of properties viz., item Nos.8 and 9, is totally unnecessary. Further grievance of the petitioner is that the three items of properties referred to in Serial No.9 viz., Survey Nos.444/2, 444/3 and 444/4 do not belong to the petitioner and on the other hand, the same belong to his daughter and therefore, it cannot be attached.

5. It is seen that the petitioner has already made a representation before the third respondent on 20.08.2018, ventilating the above said grievances. It is seen that the said representation is still pending and not disposed of. Therefore, it is for the third respondent to consider the said

representation and pass orders taking note of the facts and circumstances and the documents filed by the petitioner in support of such contentions. The petitioner shall furnish a copy of the said representation to the third respondent along with the copy of the order passed in this writ petition.

6. Therefore, without expressing any view on the merits of the contentions raised by the petitioner, this writ petition is disposed of only by directing the third respondent to consider the said representation of the petitioner dated 20.08.2018 and pass orders on the same on merits and in accordance with law within a period of two weeks from the date of receipt of a copy of this order. No costs. The connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

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To

1.The Deputy Commissioner of Income,
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2.Commissioner of Income Tax (Appeals)-19,
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Chennai 600 034.

3.Office of the Tax Recovery Officer-2,
No.63, Race Course Road,
Coimbatore-18.

+1cc to M/S.G.R.Associates, Advocate Sr.61358
+1cc to Mr.A.P.Srinivas, Advocate Sr.61099

W.P.No.22107 of 2018

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srg 18/09/2018