IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.01.2018

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.1273 of 2018
&
W.M.P.No.1585 of 2018

Tamil Nadu Pollution Control Board
Rep. by its Member Secretary
76, Mount Salai
Guindy
Chennai - 600 032 ... Petitioner

vs

1.Commissioner of Income Tax
(Appeal) -17
Room No.220, Aayakar Bhavan
Main Building, 2nd Floor
Mahatma Gandhi Road
Nungambakkam
Chennai - 600 034

2.Joint Commissioner of Income Tax
(OSD) (Exemptions)
Room No.303, III Floor
Annex Building
121, Mahatma Gandhi Road
Nungambakkam
Chennai - 600 034

3.Deputy Commissioner of Income Tax
(Exemptions)
121, Mahatma Gandhi Road
Nungambakkam
Chennai - 600 034 ...Respondents

Prayer:- Writ Petition filed under Article 226 of Constitution of India, to issue a Writ of Mandamus forbearing the respondents from initiating any coercive action against the writ petitioner for recovery of the amount.

For Petitioner : Ms.Rita Chandrasekar

For Respondents : Ms. Hema Muralikrishnan

O R D E R

Heard Ms.Rita Chandrasekar, learned counsel appearing for the Tamil Nadu Pollution Control Board and Ms. Hema Muralikrishnan, learned standing counsel for the respondents.

2.The petitioner is before this Court seeking for issuance of writ of mandamus forbearing the respondents from initiating any coercive action against the writ petitioner for recovery of the amount of tax as quantified in the Assessment Orders dated 31.03.2016 for the Assessment Years 2009-10 to 2012-13 under Section 143 (3) r/w. Section 147 of the Income Tax Act, 1961. As against the said order, the petitioner Board preferred appeals to the Commissioner of Income Tax (Appeals)-17, Chennai. The Appellate Authority, by order dated 27.12.2017, has dismissed the appeals and confirmed the orders passed by the Assessing Officer. Consequently, a demand notice dated 08.01.2018 has been issued to the petitioner Board demanding a total amount of Rs.124,27,23,512/- and directing the petitioner Board to pay the same by 17.01.2018 along with interest under Section 220(2) of the Act. It is seen that as against the order passed by the Commissioner of Income Tax (Appeals) dated 27.12.2017, the petitioner has an effective alternate remedy of an appeal before the Income Tax Appellate Tribunal. The time limit for preferring an appeal is 60 days from the date on which the order passed by the Commissioner of Income Tax (Appeals) was received by the petitioner Board. According to the learned counsel for the petitioner, the copy of the order was received on 08.01.2018. Therefore, well before the expiry of the period for filing an appeal, the respondent would not be justified in enforcing the demand dated 08.01.2018. If it is enforced, then the petitioner's right to file the appeal would be defeated and the appeal is likely to be rendered as infructuous.

3. In the light of the above, demand notice dated 08.01.2018, issued by the second respondent, shall be kept in abeyance for a period of 60 days from 08.01.2018 till the expiry of the period for filing an appeal before the Income Tax Appellate Tribunal. It is open to the petitioner Board to pursue the matter before the Income Tax Appellate Tribunal.

The writ petition is disposed of with the above direction. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS-iii)

//True Copy//

Sub Assistant Registrar

gpa

To

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+1cc to Mrs.RITA CHANDRASEKAR, Advocate, S.R.No. 4178
+1cc to Mrs.HEMA MURALIKRISHNAN, Advocate, S.R.No. 4185

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CA(CO)
TR(19/01/2018)