IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :28-08-2018

CORAM

THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.1937 of 2016
and W.M.P.No.1694 of 2016

V.Jayapalan ...Petitioner

vs

1. The Assistant Commissioner of
Commercial Taxes,
(Full Additional Charge),
Cuddalore Town,
Cuddalore District.

2. The Commercial Tax Officer,
Office of the Commercial Tax Office,
Cuddalore Town,
Cuddalore District.

3. The Branch Manager,
Indian Bank,
Korattur Branch,
Chennai - 600 080. ...Respondents

Prayer: Writ petition has been filed under Article 226 of the Constitution of India to issue a writ of Certiorari to call for the records in Na.Ka.A3/1056/2015 dated 30.11.2015 on the file of the first respondent and quash the same as arbitrary, illegal and without jurisdiction.

For Petitioner : Mr.A.Thiagarajan
Senior Counsel
For Mr.D.Veerasekaran

For Respondents
For R1&2 : Ms.Dhanamadhiri
Government Advocate (Taxes)

For R3 : Mr.N.Chandra Raj

O R D E R

The order of attachment dated 30.11.2015, issued by the first respondent has sought to be quashed in the present writ petition. The writ petitioner states that the property bearing

Plot No.32, Door No.4/32, property tax assessment No.22529, Subbarayulu Nagar, Tirupadripuliyur, Cuddalore District, measuring East to West on the Southern side 45 feet and Northern side 45 feet, South to North on the Eastern side 98 feed and on the Western side 98 feet total 4,410 sq.ft. with a house etc., was attached by the first respondent by his proceeding dated 30.11.2015, which was received by the writ petitioner on 14.01.2016.

2. The petitioner would further submit that the said property is situated in Ward No.5, Block No.45, T.S.No.1743 and 1745 within the Registration District of Cuddalore and the above said attachment was issued on the ground that there was an arrears of sales tax from VJ Flats, Contractors No.10/20, E.B.Colony, Chellakuppam, Cuddalore to an extent of Rs.12,14,675/-. The writ petitioner was called upon to make payment within three days from the date of receipt of notice and the notice was dated 30.11.2015, and the same was served only on 14.01.2016. In the mean while, the respondent attached the bank account bearing account No. 504908792, Indian Bank, Korattur Branch, Chennai.

3. The writ petitioner states that the Enforcement Officers inspected the petitioner's daughter's house bearing Door No.10/20, E.B. Colony, Chellakuppam, Cuddalore, as if the petitioner was doing flat promoting activities. But on the date of inspection, they could not able to find any thing relating to the business transactions or any construction activities. It was only a residential house constructed twenty years back.

4. The learned counsel appearing on behalf of the writ petitioner mainly contended that the original assessment order dated 15.06.2015 was not served to the writ petitioner. The consequential impugned order of attachment alone served, therefore, the impugned order has to be scraped. When the original order of assessment was not served, the consequential order of attachment can never be issued against the writ petitioner and the writ petitioner is deprived of his right to prefer an appeal against the order of assessment, which has not been served on him.

5. The learned Government Advocate (Taxes) appearing on behalf of the respondents opposed the contention of the learned counsel appearing for the petitioner in entirely. The learned Government Advocate produced the original files showing that the original assessment order dated 15.06.2015, had been sent to the writ petitioner to the correct address through registered post

in the covered envelope and the petitioner failed to receive the same on 17.08.2015. The learned Government Advocate is of the opinion that the respondent had sent the original assessment order dated 15.06.2015, to the writ petitioner through Registered Post and he refused to receive the post from the Postman. Thus, the service became completed. However, the department affixed the order on the door of the writ petitioner and that also had been executed by the officials. Further the original file revels that the original assessment order was affixed on the door of the resident of the writ petitioner and at the time of affixing the original assessment order the Inspector of the Commercial Tax was also present. The Deputy Commissioner for Commercial Tax was also present and singed in the said order of attachment.

6. Under Section 51 of the Act, the writ petitioner has got a right of appeal against the original assessment order. The only grievance of the writ petitioner is that the original assessment order had not been served. Now the original files produced before this Court clearly establishes that the original assessment order, which was sent to the writ petitioner to his correct address, through the Registered Post, was refused by the writ petitioner. Thereafter, the assessment order was affixed on the residential doors of the writ petitioner by the competent authorities in the presence of witnesses. Thus, the files reveal that the original assessment order was served to the writ petitioner by following the procedures contemplated under law. However, the writ petitioner had not preferred any statutory appeal and therefore, the present writ petition is filed without exhausting the remedies available under the Statutes, cannot be entertained. If the original order of assessment became final, then the consequential order of attachment, cannot be challenged as the Assessee had accepted the original assessment order. In the event of not challenging the original assessment order, it is to be construed that the assessment became final and therefore the consequential attachment order, cannot constitute a cause of action for moving the writ petition or otherwise.

7. In respect of the present writ petition on hand, the attachment order issued, consequent to the issuance of the original assessment order, is under challenge. Now it is established by the respondents that they have served the original assessment order to the writ petitioner in the manner known to law. Thus, the writ petition deserves no further consideration as the grounds raised in this regard has been repudiated by the respondents by placing the original files before this Court. In the event of preferring any appeal by the writ petitioner, it is left open to the competent authorities to look into the same on merits and in accordance with law.

8. Thus, the writ petition deserves no merit consideration and accordingly, the same stands dismissed. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is also dismissed.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

rts/Svn
To

1. The Assistant Commissioner of
   Commercial Taxes,
   (Full Additional Charge),
   Cuddalore Town,
   Cuddalore District.

2. The Commercial Tax Officer,
   Office of the Commercial Tax Office,
   Cuddalore Town,
   Cuddalore District.

3. The Branch Manager,
   Indian Bank,
   Korattur Branch,
   Chennai - 600 080.

+1 CC to Mr.D.Veerasekaran, Advocate sr 58739.
+1 CC to Spl. Govt. Pleader sr 58185.

W.P.No.1937 of 2016

SRG(27/09/2018)