IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 14.06.2018
CORAM
THE HON' BLE MR.JUSTICE T.S.SIVAGNANAM
W.P.No.14445 of 2018 &
W.M.P.No.17056 of 2018

1.Union of India
Rep.by the Secretary to Government (Revenue),
Puducherry - 605 001.

2.The Deputy Collector (Revenue) (North)
Pondicherry,
Revenue Complex,
Kamaraj Salai, Saram,
Pudhucherry - 605 013. ... Petitioners

vs

The Income Tax Officer
TDS Ward
Deivanayagam Pillai Thottam
Muthialpet
Puducherry - 605 005.
...Respondent

Prayer: Writ Petition filed under Article 226 of Constitution of India, to issue a Writ of Certiorari to call for the records on the file of the respondent in order No.Arrear Demand / TDS/1/CHED 06291 F / 2017-18, dated 8.1.2018 and quash the same.

For Petitioner : Mr.J.Kumaran
Government Advocate
for Mr.A.Gandhiraj(GP)Pondicherry

For Respondent : Ms.Hema Murali Krishnan
Senior Counsel &
Naveen Durai Babu

O R D E R

Heard Mr.J.Kumaran, learned Government Advocate for Mr.A.Gandhiraj, learned Government Pleader, Pondicherry, appearing for the petitioners and Ms.Hema Muralikrishnan, learned Standing Counsel appearing for the respondent

2. The petitioner is the Secretary to Government (Revenue), Puducherry and the Deputy Collector (Revenue) (North) Pondicherry, who is the Land Acquisition Officer. Challenge in this Writ petition is to a notice issued by the respondent dated 08.01.2018 informing the 2nd petitioner that on verification of the office record and TRACES account, it is noticed that a sum of Rs.7,38,58,242/- is outstanding as arrears demand for TDS default in various years. The 2nd petitioner has been advised to pay the demand and treat the impugned notice as final opportunity, upon failure to comply with the same and pay the arrears will result in initiation of coercive action of recovery of demand without any further notice.

3. The petitioners are before this Court challenging the impugned communication by contending that Section 194 LA of the Income Tax Act came into force in the year 2004 and the same was communicated to the office of the 2nd petitioner by the Income Tax officer, TDS Ward, Puducherry in the year 2008 vide letter dated 06.02.2008, i.e., almost four years from the date of effect of the provisions of the Act. Therefore, it is submitted that the respondent was not justified in demanding tax from the year 2004 onwards including interest. Further it is submitted by the learned Government Advocate that as per Section 194 LA of the Act, agricultural lands are exempted from deduction of tax at source when compensation is paid for acquiring agricultural lands. It is submitted that the order passed by the Assessing Officer was put to challenge and the Income Tax Appellate Tribunal partly allowed the appeal and remanded the matter for fresh consideration and the officer, by individual orders, held that the lands, which were acquired were classified as non-agricultural lands, such as, house, flats etc., and therefore, tax ought to have been deducted at source.

4. As rightly pointed out by the learned Standing Counsel for the Revenue, the petitioner having not questioned the order passed under Sections 201(1) and 201(1A) r/w Section 254 of the Act and the consequential demand notice issued under Section 156 of the Act, both dated 30.03.2014, cannot at this stage of the matter impugne a communication sent by the respondent granting a final opportunity to the petitioners to pay the demand. Therefore, it is contended that unless and until the petitioner has filed an appeal against the order dated 30.03.2014, the question of entertaining a Writ petition against the impugned communication does not arise.

5. As pointed out earlier, the stand taken by the Revenue is perfectly justified and is in order. Therefore, this Court cannot entertain the Writ petition challenging the impugned communication, which is a consequence upon the assessment order passed dated 30.03.2014. However, the petitioner is not remedy less as appeals are maintainable against the orders passed under Section 201(1) and 201(1A) r/w 254 of the Act.

6. Under normal circumstances, this Court would have right away dismissed the Writ petition. However, taking note of the submissions made by the learned Government Advocate, that the petitioners shall prosecute the matter before the appellate authority, while holding that the challenge to the impugned communication is not maintainable, it is left open to the petitioner to move the Appellate Authority, if they are so advised, challenging the order passed by the Assessing Officer under Section 201(1) and 201(1A) r/w 254 of the Act . Since there is a threat of coercive action being initiated against the Government authorities, this Court directs the respondent not to initiate any such action for a period of 15 days from the date of receipt of a copy of this order to enable the petitioners to workout their remedy in accordance with law.

With these observations, this Writ petition is dismissed. No costs. Consequently connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (CS-)

//True Copy//

Sub Assistant Registrar

vsa/Rj

To

The Income Tax Officer
TDS Ward
Deivanayagam Pillai Thottam
Muthialpet
Puducherry - 605 005.

+1cc to The Government Pleader, Advocate, sr.38056

W.P.No.14445 of 2018 &
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GSP(22/06/2018)