IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.1.2018

CORAM :

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

WRIT PETITION NOS.34732 & 34733 OF 2016 &
WMP.NOS.29923 & 29924 OF 2016, 3764 & 14066 OF 2017,3765,14024/17

M/s.Jubilee Plot & Housing Pvt. Ltd., rep.by Managing Director Mr.R.P.Darmalingam ...Petitioner in WP.34732/2016

Mr.R.P.Darmalingam ...Petitioner in WP.34733/2016

Vs.

1.The Assistant Commissioner of Income Tax, Central Circle 2(2), Chennai-34. ...R1 in WP.34732/2016 & R3 in WP.34733/2016

2.The District Collector, Kanchipuram District. ...R2 in WP.34732/2016 & R1 in WP.34733/2016

3.The Special Tahsildar (LA), Unit II, Mannur, Valarpuram Nemili Scheme SIPCOT, No.14/43, Govinda Medu Street, Near Taluk Office, Sriperumbudur-602105. Kanchipuram District. ...R3 in WP.34732/2016 & R2 in WP.34733/2016

PETITIONS under Article 226 of The Constitution of India praying for issuance of a Writ of Certiorarified Mandamus to call for the records of the 1st respondent in the proceedings vide order dated 06.7.2016 initiated under Section 226(3) of the Income Tax Act, quash the same and direct the 2nd and 3rd respondents to forthwith pay the sum of Rs.8,25,46,285/- being 15% of the disputed demand for the assessment years 2008-09 to 2014-15 directly to the 1st respondent from out of the sum due to the petitioners under award Nos.1, 2 & 3 of 2016 dated 29.4.2016 and 25.5.2016 and further forbear the 1st respondent from taking any other coercive steps for recovery of the tax pending disposal of the appeals filed before the Commissioner of Income Tax (Appeals-II), Chennai (WP.No.34732 of 2016) and a Writ of Mandamus directing the first and second respondents to forthwith pay the sum of Rs.1,20,47,042/- being 15% of the disputed demand for the assessment years 2008-09 to 2014-15 directly to the 3rd respondent from out of the sum due to the petitioners under award Nos.1, 2 and 3 of 2016 dated 29.4.2016 and 25.5.2016 and further forbear the 3rd respondent from taking any other coercive steps for recovery of the tax pending disposal of the appeals filed before the Commissioner of Income Tax (Appeals-II), Chennai (WP.No.34733 of 2016).

For Petitioners	:	Mrs.Pushya Sitaraman, SC Mr.M.Vivekanandan
For Department	:	Mr.A.P.Srinivas, SSC for R1 & R2
For State	:	Mr.R.Rajeswaran, SGP R3

COMMON ORDER

Heard both.

2. The petitioner in W.P.No.34732 of 2016 is a company called M/s.Jubilee Plot and Housing Private Limited and the petitioner in W.P.No. 34733 of 2016 is the Managing Director of the said company.

3. The prayer sought for in both the writ petitions is identical and therefore, the writ petitions are taken up together and disposed of by this common order.

4. In W.P.No.34732 of 2016, the petitioner company impugned the notice dated 06.7.2016 issued by the Income Tax Department under Section 226(3) of the Income Tax Act, 1961, addressed to the Special Tahsildar, calling upon them to pay the arrears of tax payable by the company as assessed for the assessment years 2008-09, 2011-12, 2012-13 and 2013-14. They also sought for a further direction to the State officials namely the District Collector and the Special Tahsildar to pay 15% of the disputed demand for the said assessment years from and out of the sum due to the petitioners under award Nos.1, 2 and 3 of 2016 dated 29.4.2016 and 25.5.2016 and to forbear the Income Tax Department from taking any coercive steps for recovery of tax pending disposal of the appeals filed before the Commissioner of Income Tax (Appeals-II).

5. In the writ petition filed by the Managing Director of the company, he sought a direction to the State Officials to pay 15% of the disputed demand for the assessment years 2008-09 to 2014-15 directly to the Income Tax Department and to forbear the Income Tax Department from taking any other coercive steps for recovery of the tax pending disposal of the appeals filed before the Commissioner of Income Tax (Appeals-II), Chennai.

6. The petitioners, as against the assessment orders passed by the Assessing Officer for the relevant assessment years, preferred appeals before the Commissioner of Income Tax

(Appeals-II) and the appeals are pending. In the meantime, since action has been initiated by the Assessing Officer for recovery of tax as quantified in the assessment orders, the assessees filed petitions before the Assessing Officer on 20.6.2016 stating that they may be permitted to pay 15% of the tax demanded and prayed for grant of stay of the balance amount payable. After the said petitions were filed, it appears that the impugned garnishee notice, which is impugned in W.P.No.34732 of 2016, has been sent by the Assessing Officer to the Special Tahsildar (LA). Thus, it is seen that the Assessing Officer has not taken a decision on the petitioners' stay petitions, which ought to have been taken prior to issuance of the garnishee order to the Special Tahsildar (LA).

7. The learned Senior Standing Counsel appearing for the Revenue would submit that the Income Tax Department is not concerned with the land acquisition proceedings or the compensation amount, which is to be paid by the State Government to the writ petitioners, but the Income Tax Department is interested in recovery of tax demanded in the respective assessment orders, which pertain to the business income of the petitioners and that they have nothing to do with the land acquisition proceedings.

8. In my considered view, such a stand taken by the Assessing Officer may not be fully correct especially when the Assessing Officer issued the garnishee notice to the Special Tahsildar (LA) calling upon him to pay the entire compensation amount payable to the petitioners directly to the Income Tax Department for being adjusted against the tax dues. Therefore, to that extent, the Income Tax Department, having issued a garnishee notice to the Special Tahsildar (LA), cannot dissociate itself completely from these proceedings.

9. Be that as it may, it has to be seen as to how the interest of the Revenue has to be protected and at the same time, the petitioners - assessees are to be granted a reprieve, so that the appeals filed by the assessees are not rendered infructuous. Though lands were acquired formally and awards were passed, the Government took a stand that they are no longer interested in continuing with the land acquisition proceedings and this was challenged by way of filing a writ petition by other land owners. Ultimately, the Government issued G.O.Ms.No.167 Industries (SIPCOT-LA) Department dated 02.12.2017 accepting the request of the Managing Director of the SIPCOT that out of 639.94 acres of lands ordered for acquisition in Mannur, Nemili and Valarpuram villages, acquisition for reduced contiguous area of 228.87 acres of land may be continued for acquisition and that the remaining extent of 4.11.07 acres may be withdrawn from acquisition by de-notification as per the Tamil Nadu Acquisition of Land for Industrial Purposes Act, 1997.

10. According to the petitioners, the lands owned by them stand covered in the area, which is now proposed to be retained in the acquisition proceedings pursuant to G.O.Ms.No.167 dated

02.12.2017 and the payment of compensation as awarded is in the advanced stage of being settled and probably within 30 days, the compensation amount will be paid to the Department.

11. Thus, considering the above facts, this Court is of the considered view that the demand in the impugned assessment order can remain stayed till the disposal of the appeals by the Commissioner of Income Tax (Appeals) subject to a condition.

12. Accordingly, W.P.No.34732 of 2016 is allowed and the garnishee notice dated 06.7.2016 is set aside subject to the condition that both the petitioner company and the Managing Director of the company pay 20% of the disputed tax for all the assessment years within a period of five weeks from the date of receipt of a copy of this order. If the petitioners comply with the above condition, payment of balance tax shall remain paid till the disposal of the appeals pending before the Commissioner of Income Tax (Appeals-II), Chennai. In the event the petitioners fail to comply with said condition as ordered above within the time stipulated, the Income Tax Department is entitled to initiate recovery proceedings. Accordingly, WP.No.34733 of 2016 is disposed of. No costs. Consequently, all connected pending WMPs are closed.

13. After the above order is dictated, the learned Senior Counsel appearing for the petitioners would submit that an extent of 13 acres, out of the lands, which are the subject matter of acquisition, has been given as a security to the Income Tax Department and to facilitate payment of compensation, the petitioners may be permitted to substitute the security to the Income Tax Department to the satisfaction of the Assessing Officer.

14. If such a request is made by the petitioners, the same shall be considered by the Assessing Officer in accordance with law.

Sd/-
Asst.Registrar (CO)

/true copy/

Sub Asst. Registrar

To

1.The Assistant Commissioner of Income Tax, Central Circle 2(2), Chennai-34.

2.The District Collector, Kanchipuram District.

3.The Special Tahsildar (LA), Unit II, Mannur, Valarpuram Nemili Scheme SIPCOT, No.14/43, Govinda Madu Street, Near Taluk Office, Sriperumbudur-602105. Kanchipuram District.

4.The Commissioner of Income Tax(Appeals II)
Chennai.

+ 2 cc to M/s.M.Vivekanandan Advocate,SR.504 & 505

+ 1 cc to M/s.A.P.Srinivas Advocate,SR.325

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