In the High Court of Judicature at Madras

Dated : 12.12.2018

Coram :

The Honourable Mr.Justice T.S.SIVAGNANAM

and

The Honourable Mr.Justice N.SATHISH KUMAR

Writ Appeal No.2440 of 2018 & CMP.Nos.19678 to 19682 of 2018

T.S.Kumaraswamy, Proprietor,
Christy Friedgram Industry,
Tiruchengode, Namakkal District. ...Appellant

Vs

1.The Director General of Income Tax
(Inv.), Tamil Nadu and Pondicherry,
Nungambakkam, Chennai.

2.The Principal Director of Income
Tax (Inv.), Investigation Wing,
Nungambakkam, Chennai.

3.The Additional Director of Income
Tax, Investigation, Unit 3,
Nungambakkam, Chennai.

4.The Deputy Director of Income Tax,
Investigation Unit 3(2), Nungambakkam,
Chennai.

5.The Deputy Director of Income Tax,
Investigation Unit-4 (3), Nungambakkam,
Chennai.

6.The Assistant Commissioner of Income
Tax, Circle I, Namakkal. ...Respondents

APPEAL under Clause 15 of the Letters Patent against the order dated 01.11.2018 passed in W.M.P.No.33898 of 2018 in W.P.No.28991 of 2018.

Prayer in W.P.No.28991 of 2018:

Petition filed under Article 226 of the Constitution of India praying to issuance of Writ of Certiorarified Mandamus calling for the records of the 4th Respondent contained in the Warrant for Attachment of Properties dated 24/10/2018 and quash the same as illegal arbitrary and contrary to law and consequently restrain the respondents their subordinates agents and employees from preventing the petitioner from using operating or withdrawing sums from his bank accounts receivables and all assets and properties of the petitioner.

WMP No.33898 of 2018:

to pass an order of interim injunction restraining the respondents their subordinates agents and employees from preventing the petitioner from using operating or withdrawing sums from his bank accounts and/or receivables and other properties.

For Appellant : Mr.P.S.Raman, SC for Mr.Rahul Balaji

For Respondents: Mr.A.P.Srinivas, SSC

Judgment was delivered by T.S.SIVAGNANAM,J

We have heard Mr.P.S.Raman, learned Senior Counsel appearing on behalf of Mr.Rahul Balaji, learned counsel on record for the appellant and Mr.A.P.Srinivas, learned Senior Standing Counsel appearing for the respondents.

2. A reference may be made to the order dated 03.12.2018 passed in CMP.No.21693 of 2018 and for better appreciation, the same is quoted as hereunder :

> "This petition has been filed by the Director General of Income Tax (Investigation) and six others who are the officials of the Income Tax Department to permit the second petitioner, namely, the Principal Director of Income Tax (Investigation) (hereinafter referred to as "the PDIT (Investigation)), Chennai to revoke the order dated 07.11.2018 passed pursuant to the order passed by the Division Bench on 02.11.2018 in this appeal.
>
> 2. Mr.Sathish Parasaran, learned senior counsel appearing for the petitioners

submitted that the application filed by the revenue with the prayer to permit them to revoke the order dated 07.11.2018 which is to be dismissed as not maintainable on the ground that any attempt by the Executive Authority to provide itself a protective cover against challenges or criticism to its action by passing the bug to the judiciary in the official decision should be resisted and avoided. In support of such contention, the learned counsel placed reliance on the decision of the Hon'ble Supreme Court in the case of Priyadarshini Dental College and Hospital vs. Union of India and others [reported in (2011) 4 SCC 623].

3.We have heard Mr.A.P.Srinivas, learned Standing Counsel appearing for the revenue on the above submissions.

4.In our considered view, the petition filed by the revenue is maintainable and we are entitled to consider the same and we are of the firm opinion that it is not an attempt to pass on the bug to this Court and to obtain a protective cover against the departmental action. We support such conclusion with the following reasons.

5.The Division Bench passed an order on 02.11.2018 in this appeal which arose out of a challenge to an order dismissing the miscellaneous petition filed by the appeal to pass a suitable interim orders in the writ petition which was challenging the search and seizure operations as well as the orders of attachment passed against the assessees. The order passed by the Division Bench dated 02.11.2018 is quoted herein below:

'Heard Mr.P.S.Raman, learned Senior Counsel appearing for the appellant and Mr.A.P.Srinivas, learned Standing Counsel for the respondents for some time.

2.It appears that the appellant had moved the writ court seeking interim relief as against the search and seizure/attachment in the premises of the appellant by the respondent-authorities and they are aggrieved by the order of the learned Single Judge in dismissing the application which sought for interim order and therefore, they are before this Court.

3.The learned Senior Counsel appearing for the appellants would submit that there is some illegality in the procedure followed by the authorities while making such search and seizure/ attachment and because of the seizure/ attachment, the appellant is unable to run the business resulting in stalling of their all business activities and they are not even able to disburse wages to their employees and therefore, it causes much hardship to the appellant. The learned Senior Counsel appearing for the appellant fairly expresses the willingness on the part of the appellant to furnish bank guarantee as an interim measure in the matter. It is further submitted by the learned Senior Counsel that out of the amount the appellant receives from the Civil Supplies Corporation in respect of their business transactions, only 5% would be the profit of the appellant and therefore, they would furnish bank guarantee for the appropriate amount.

4.In the circumstances, we hereby permit the appellant to pursue the matter before the Commissioner concerned forthwith seeking his indulgence to set right the things with regard to the illegality in the procedure alleged to have been adopted by the officer concerned in the matter of search and seizure/attachment. In such event, the Commissioner concerned shall re-consider the issue on merits and in accordance with law. If the appellant is aggrieved even thereafter, it is left open to them to move the learned Single Judge or this Court. List the matter on 9.11.2018.'

6.In the order passed by the Division Bench, the Court has recorded the submissions of the learned senior counsel for the appellant and in paragraph 4 of the order, it has permitted the appellant to pursue the matter before the Commissioner concerned forthwith seeking indulgence to set right the things with regard to the illegality in the procedure alleged to have been adopted by the officer concerned in the matter of search and seizure/attachment. On the appellant approaching the

Commissioner, the Commissioner was directed to re-consider the issue on merits and in accordance with law leaving it open to the appellant to move the Single Bench or the Division Bench, if they are aggrieved even thereafter. As pointed out by the learned counsel appearing for the revenue, there appears to be two limb to the directions/liberty issued/granted. The first is with regard to the contentions raised by the assessee with regard to the illegality in the matter of search and seizure and consequently with the order of attachment. The assessee accepted the order dated 02.11.2018 and went before the Commissioner who has passed the order dated 07.11.2018. Before the second petitioner, namely, the PDIT (Investigation), the authority has recorded that in the representation of the assessee dated 03.11.2018, certain facts were mentioned and assertions have been made. However, the authority has not dealt with the same on the ground that the matter is sub-judice before this Court. Taking into consideration the submissions made by the assessee that a sum of Rs.417,46,20,742/- are the receivables for the four concerns, one of whom is the assessee, namely, Christy Friedgram Industry and considering the submissions made, the PDIT (Investigation) ordered that the payments due for suppliers of Rs.117,18,38,346/- may be released to the assessee after the Investigating Officer verifies the genuineness of the claim and the balance surplus available from the receivables of Rs.297,56,42,396/- are to be released or deposited in the PD account in the name of the PDIT (Investigation) towards part of the tax liability alone on the admitted undisclosed income of Rs.1350 Crores. Alternatively in terms of the observations made by the Division Bench in its order dated 02.11.2018, it was stated that an irrevocable Bank Guarantee towards tax liability on the admitted amount of Rs.1350 Crores from a Scheduled Commercial Bank may be furnished so that the orders of attachment dated 24.10.2018 can be revoked after receiving the Bank Guarantee.

7.It appears that the Department received certain information from the Tamil Civil Supplies Corporation (TNCS) vide communication dated 20.11.2018 mentioning that the amounts payable to the assessee and other concerns is Rs.57.11 Crores. According to the assessee this letter was very much available with the Department even before this petition was filed. Be that as it may, the Department has issued a notice to the assessee dated 26.11.2018 among other things stating as follows:

'3.From the communication received from Integrated Child Development Services and Tamil Nadu Civil Supplies, Chennai it has been ascertained that the amount of receivables is only Rs.179,75,98,248/-. However, you have reported receivables of Rs.417.46 Crores. Therefore, you have misrepresented and furnished incorrect information regard the quantum of receivables before the undersigned and hence the said order dated 07.11.2018 requires to be revoked. In these circumstances, you are required to show cause why the Integrated Child Development Services, Chennai & Tamil Nadu Civil Supplies, Chennai and also why action as per the provisions of Income Tax Act, 1961 should not be initiated for furnishing false information.

4.Your case stands posted for hearing on 30/11/2018 at 11.00 am at Room No.207, Investigation Building, 46, Mahatma Gandhi Road, Chennai - 34.'

8.It is submitted by the learned counsel appearing for the assessee that they received the above referred communication only after the time fixed for hearing. Be that as it may, the assessee have challenged the order dated 07.11.2018 by a separate writ petition which is pending before the learned Single Judge on certain other grounds. Considering these facts, we are of the considered view that the Department is well justified in moving this Court as there are several writ petitions pending apart from the direction issued in the writ appeal by the Division Bench and the main writ petition has also been pending. In the fitness of things, it is appropriate on the part of the Department to seek for leave from this Court to revoke the order dated 07.11.2018. Therefore, we find that it is not a case where the authorities are attempting to pass on the bug to the Court or to obtain protective orders so as to put the assessee in disadvantage position. Therefore, the preliminary objection raised by the assessee stands rejected.

9.Now, we move to consider the relief sought for by the assessee before us. In the opinion of the Department which is based upon the communication received from the Integrated Child Development Services (ICDS) and Tamil Nadu Civil Supplies (TMCS), the receivables is only Rs.179,75,98,248/- and the assessee had reported receivables of Rs.417.46 Crores. The Department is of the prima facie view that the assessee has misrepresented and furnished incorrect information regard the quantum of receivables before the authorities and hence, the order dated 07.11.2018 requires to be revoked. Therefore, the communication dated 26.11.2018 has been issued which is in the nature of show cause notice. The assessee's case is that the communication sent by the TNCS and ICDS to the authority dated 22.11.2018 has not been reckoned which clearly shows that the receivables are more than Rs.350 Crores.

10.Thus, considering the factual matrix the matter definitely requires to be re-considered and the assessee should be given an opportunity to place materials. Further, the TNCS and ICDS are also required to be heard by the authority before taking a decision and an Officer not below the rank of Managing Director should be present before the concerned authority with all records to show as to what are the receivables by the assessee and the other concerns.

11.Considering the above facts, C.M.P.No. 21693 of 2018 is allowed and consequently the order dated 07.11.2018 stands revoked and the matter stands remanded to the Principal Director of Income Tax (Investigation), Tamil Nadu and Pondicherry, Investigation Wing, Chennai –

34 for taking a fresh decision after giving effective opportunity to the assessee. It is made clear that the above direction has been issued in the light of the stand taken by the Department that the receivables are lesser than what the assessee had stated before them at the time when the order dated 07.11.2018 was passed. The said authority is directed to conclude the hearing and pass orders within a period of one week from today (03.12.2018).

12.List the main writ appeal on 11.12.2018."

3. In terms of the directions issued in the said order, the Principal Director of Income Tax, Investigation, Tamil Nadu and Pondicherry, Investigation Wing, Chennai-34 (hereinafter called the PDIT) was directed to take a fresh decision in the matter after giving an effective opportunity to the assessee. This direction was issued after CMP.No.21693 of 2018 was filed by the respondents herein whereby the order passed by the PDIT dated 07.11.2018 stood revoked. Pursuant to the said direction, the PDIT issued the notice dated 06.12.2018 and passed the order dated 07.12.2018.

4. The learned Senior Counsel appearing for the assessee fairly submits that the Department has been very fair to the assessee and that the assessee is fully satisfied with the order dated 07.12.2018. In the said order dated 07.12.2018, the PDIT agreed that the total receivables by the assessee and others upto 06.12.2018 are Rs.512.90 Crores and after deducting 10% towards mandatory deductions, which are stated to be normally done by the Tamil Nadu Civil Supplies Corporation (TNCSC) namely a sum of Rs.51.29 Crores, the total receivables are arrived at to the tune of Rs.461.61 Crores. Out of the said sum of Rs.461.61 Crores, the PDIT directed the release of Rs.248.31 Crores after deducting the amounts, which are stated to be paid to the suppliers, amounts towards expenses and advances required to procure raw materials. Thus, for the balance of Rs.213.30 Crores, which are receivables from the TNCSC and the ICDS, the apprehension of the assessee and their group concern is that this amount is sought to be appropriated by the Department even prior to conclusion of the assessment proceedings.

5. Per contra, the learned Senior Standing Counsel for the Revenue has vehemently contended that this Court, while passing the order dated 03.12.2018, referred to the order passed by the other Division Bench dated 02.11.2018 and noted that there were two limbs to the direction/liberty issued/granted by the Division Bench and therefore, this Court should adjudicate upon

that and in this regard, the learned Senior Standing Counsel has referred to what has been stated by us in paragraph 6 of the order dated 03.12.2018.

6. We find that the observations contained in paragraph 6 of the order dated 03.12.2018 are, in fact, the submissions made by the learned counsel and the scope of the directions issued, etc., and the same cannot be construed as an order passed by us. In any event, an interim direction issued in this appeal cannot travel beyond the final order passed and the interim order should and shall stand terminated with this judgment, which is the final judgment in this appeal. However, it is well open to the PDIT or any other Authority to proceed in accordance with law. Now, we are concerned with the amount of Rs.213.30 Crores, which are receivables. In our considered view, this amount cannot be appropriated by the Income Tax Department at this juncture since the assessment proceedings are yet to be over and what are the subject matters of challenge in the writ petitions are the orders of attachment and search. Therefore, the parties should be left to agitate their respective rights and contentions in the pending writ petitions. We are of the firm view that nothing would survive for adjudication in this appeal. However, we are conscious of the fact that interests of the Revenue require to be protected.

7. Hence, we dispose of this writ appeal with the following directions :

i. A sum of Rs.213.30 Crores (Rupees two hundred and thirteen crores and thirty lakhs only), which is stated to be receivables of the appellant - writ petitioner from the TNCSC and the ICDS shall be kept in an interest bearing account in the Indian Bank, High Court Branch to the credit of W.P.No.28991 of 2018 filed by the appellant and the same shall remain in deposit subject to further orders to be passed by the Writ Court in the said writ petition as well as other connected writ petitions filed by the appellant - writ petitioner.

ii. The amount shall be deposited within a period of two weeks from the date of receipt of a copy of this judgment.

8. The learned Senior Counsel appearing for the appellant submits that the first release may be effected by the TNCSC and the ICDS to the appellant so that the suppliers can be paid, the expenses incurred can be met and the raw materials can be procured.

9. We find this request as reasonable and we direct that the sum of Rs.248.31 Crores (Rupees two hundred and forty eight crores and thirty one lakhs only) shall be released to the appellant at the earliest and not later than one week from the date of receipt of the copy of this judgment.

No costs. Consequently, the connected CMPs are closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

To

1.The Director General of Income Tax (Inv.), Tamil Nadu and Pondicherry,
Nungambakkam, Chennai.

2.The Principal Director of Income Tax (Inv.), Investigation Wing,
Nungambakkam, Chennai.

3.The Additional Director of Income Tax, Investigation, Unit 3,
Nungambakkam, Chennai.

4.The Deputy Director of Income Tax, Investigation Unit 3(2),
Nungambakkam, Chennai.

5.The Deputy Director of Income Tax, Investigation Unit-4 (3),
Nungambakkam, Chennai.

6.The Assistant Commissioner of Income Tax,
Circle I, Namakkal.

7.Ms.Sudha Devi, IAS,
Managing Director,
Tamil Nadu Civil Supplies Corporation Limited,
No.12, Thambusamy Road, Kilpauk, Chennai-10.

8.Mr.R.Kannam,IAS,
Director-Cum-Mission Director,
Integrated Child Development Scheme,
Pammal Nallathambi Street,
Taramani, Chennai-113.

+1cc to Mr.A.P.Srinivas, Advocate Sr.85917
+3cc to Mr.R.Parthasarathy, Advocate Sr.85618

WA.No.2440 of 2018 and
CMP.Nos.19678 to 19682
of 2018

srg 13/12/2018