

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.12.2018

CORAM

THE HON'BLE MR. JUSTICE K.RAVICHANDRABAABU

W.P.No.31141 of 2018
and
W.M.P.No.36338 of 2018

K.S.Velusamy

...Petitioner

vs.

1. The Commissioner of Income Tax,
Aayakar Bhawan,
No.121, MG Road, Nungambakkam,
Chennai - 600 034.
2. Income Tax Officer,
Non-Cooperative Ward 22(5)
2nd Floor, No.7, Ramakrishnan Street,
West Tambaram,
Chennai - 600 045.
3. The Tax Recovery Officer - 7
Room No.203, IInd Floor,
New Block,
No.121, Nungambakkam High Road,
Chennai - 600 034.
4. The Branch Manager
Equitar Small Finance Bank Limited,
No.128, Rajaji Road, 1st Floor,
West Mambaram,
Chennai - 600 045.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari to call for the entire records relating to impugned order passed by 3rd respondent in TRC No.146/AGUPV1463G/2017-2018/191 dated 11.10.2018 and quash the same.

For Petitioner : Mr.J.Milton Arul Rajendran

For Respondent : Mrs.Hema Muralikrishnan
Standing Counsel for R1 to 3

O R D E R

The petitioner is aggrieved against the notice dated 11.10.2018 issued under Section 226(3) of the Income Tax Act 1961 to the Branch Manager, Equitas Small Finance Bank Limited, Chennai, calling upon them to pay the Assessing Officer forthwith any amount due from them on account of the petitioner/assessee upto the amount of arrears of Rs.2,19,77,689/-.

2. The grievance of the petitioner before this Court is that the third respondent is not justified in issuing the impugned proceedings, especially, when an appeal filed against the order of assessment before the Tribunal is pending. It is stated in the affidavit filed in respect of the writ petition that in respect of assessment years 2009-10 to 2012-13, the assessee filed an Income Tax Appeal before the Income Tax Appellate Tribunal, C-Branch at Chennai, against the order of assessment and a common order was passed in the stay petition, partly allowing the same by directing the assessee to make a payment of Rs.75,00,000/- on or before 30.09.2018. Therefore, it is contended that the third respondent is not justified in issuing the impugned proceedings in the mean time.

3. The learned counsel appearing for the respondents 1 to 3, based on instructions submitted that the petitioner has not complied with the conditional order passed by the Tribunal while granting stay and thus, the stay petition itself was dismissed later.

4. The above statement made by the learned counsel for the respondents 1 to 3 is not disputed by the learned counsel appearing for the petitioner.

5. It is seen that this writ petition was filed on 08.11.2018 by which time, the time limit fixed by the Tribunal for complying with the conditional order has already expired. The fact remains that the petitioner has not complied with the conditional order. However, the affidavit filed in support of the writ petition does not disclose the fact that the petitioner has not complied with the conditional order. On the other hand, the averments stopped with the details regarding the order passed by the Tribunal and not the events that had taken place thereafter. Therefore, I find that the petitioner has not approached this Court with clean hands and bonafide. When the conditional order passed by the Tribunal has not been complied with and the stay petition is also dismissed, I find that there is no error on the part of the 3rd respondent in issuing the

impugned proceedings so as to secure the interest of the revenue. Accordingly, I find no merit in this writ petition and thus, the same is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

sni

To

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+lcc to Mrs.Hema Muralikrishnan, Advocate sr.no.86017

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