IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.11.2018

CORAM

THE HONOURABLE MR.JUSTICE K.RAVICHANDRABAABU

Writ Petition No.30180 of 2018
and
WMP.No.35240 of 2018

K.Pondurai ... Petitioner

vs.

1. The Assistant Commissioner of Income Tax
Non Corporate Circle-22
No.7, Ramakrishna Street,
First Floor, West Tambaram
Chennai-600 045.

2. The Commissioner of Income Tax (Appeals) 10
Ayyakar Bhavan
No.121, Uthamar Gandhi Road,
Nungambakkam, Chennai-600 034. ..Respondents

Writ petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, to call for the records of the first respondent in F.No.28/AAEPP8065A/2018-2019 and to quash the impugned notice dated 31.10.2018 demanding to pay arrears of tax for the assessment year 2011-2012 without determination or quantification of the amount of tax pertaining to collection of disputed taxes.

For Petitioner : Mr.J.Balachander

For Respondents : Mrs.Hema Muralikrishnan
standing counsel

O R D E R

Mrs.Hema Muralikrishnan, learned standing counsel takes notice for the respondents. By consent of the parties, the main writ petition is taken up for final disposal at the admission stage itself.

2. The petitioner is aggrieved against the proceedings of the first respondent dated 31.10.2018, wherein and whereby the petitioner was called upon to pay the demand of tax with interest on the reason that mere filing of appeal against the order of assessment is not a bar for recovering the tax due.

3. Heard both sides.

4. It is seen that in respect of the assessment year 2011-2012, an order of assessment was passed and the matter was taken up for appeal by the Assessee before the Commissioner of Income Tax (Appeals) and further before the Income Tax Appellate Tribunal. It is further seen that the Tribunal, by order dated 10.01.2018, remitted the matter back to the Assessing Officer to re-examine the matter afresh in the light of the material available on record and thereafter, decide the issue afresh in accordance with law. Consequently, the Assessing Officer has passed an order of assessment dated 29.08.2018 and the rectification petition filed by the petitioner has also came to be dismissed on 25.09.2018. The petitioner went on appeal before the First Appellate Authority viz., the second respondent herein along with the stay petition filed on 05.10.2018. It is not in dispute that the stay petition is pending before the second respondent. In the meantime, the impugned proceedings was issued on 31.10.2018 as stated supra.

5. The grievance of the petitioner before this Court is that since the stay petition is pending before the second respondent/First Appellate Authority, the first respondent is not justified in issuing the impugned demand without even waiting for an order to be passed by the second respondent in the stay petition.

6. The learned standing counsel for the respondents admitted the fact that the stay petition filed by the petitioner is still pending before the second respondent.

7. When such being the factual position, this Court is of the view that it is for the second respondent/First Appellate Authority to consider the stay petition and pass orders on the same on merits and in accordance with law, without loss of further time. Accordingly, this writ petition is disposed of in the following terms:

(a) The second respondent shall take up the stay petition filed on 05.10.2018 and pass orders on the same on merits and in accordance with law, within a period of three weeks from the date of receipt of a copy of this order.

(b) Till an order is passed by the second respondent as stated supra, the impugned demand shall be kept in abeyance.

(c) It is made clear that this Court is not expressing any view on the merits of the matter, as it is for the second respondent to consider and decide.

No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

To

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+1cc to Mr.J.Balachander, Advocate sr.no.77810

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rsy(co)
nr 15/11/2018