IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 18.12.2018

CORAM:
THE HONOURABLE MR. JUSTICE T.RAJA
W.P.No.30692 of 2018

Balamurugan ... Petitioner

Vs

Deputy Director of Income Tax
Investigation, Unit -3(2),
New No.46, Old No.108,
M.G.Road, Nungambakkam,
Chennai-34. ... Respondent

Prayer: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, directing the respondent to pass orders on Petitioner's representation dated 10.10.2018.

For Petitioner : Mr.Rahul Balaji
for M/s.Madhan Babu

For Respondent : Mr.A.N.R.Jaya Prathap,
Standing Counsel

O R D E R

This Writ Petition has been filed seeking to issue a Writ of Mandamus, directing the respondent to pass orders on the Petitioner's representation dated 10.10.2018.

2. Learned Counsel appearing for the petitioner submitted that the petitioner is working in a Private Company and earning Rs.45,000/- as a monthly income. While so, the Income Tax Department undertook search proceedings and visited his residence suddenly and took away all irrelevant materials and issued prohibitory orders on his accounts on 5.7.2018 for no fault on his part without issuing any notice. Subsequently, the petitioner was kept in total darkness and the basis of search was also not informed to him.

3. The learned Counsel for the petitioner further submitted that since the petitioner is a family man living with his wife who is unemployed and daughter who is studying M.Sc. in MOP Vaishnav College at Nungambakkam and his son, who is studying in B.Tech. in Aerospace in SRM University at Kattangalathur, Chennai, he finds it difficult to run his family in view of the said prohibitory order on his account.

4. The learned Counsel for the petitioner also submitted that under Section 132(8A) of the Income Tax Act, the Prohibitory Order cannot be in force beyond a period of 60 days. But in the present case, though the Prohibitory Order was dated 5.7.2018, the same is not lifted even after 75 days. In this regard, the petitioner has given a representation dated 10.10.2018 to the respondent. But there is no action on the same. Hence the present Writ Petition.

5. A Counter Affidavit has been filed by the Deputy Director of Income Tax, Investigation, Unit-3(2), Nungambakkam, Chennai.

6. Learning Standing Counsel appearing for the respondent relying on the stand taken by the respondent in his counter affidavit fairly submitted that the Prohibitory Order issued under Section 132(3) of the Income Tax Act is valid only for a period of 60 days and thereafter, it automatically ceases its effect.

7. It is useful to extract paragraph 3 of the Counter affidavit of the respondent here under:

> ''3. I submit that prohibitory order issued u/s.132(3) of the Income Tax Act is valid for a period of 60 days only and thereafter it automatically ceases its effect. In any case, the operation of restraint u/s.132(3) has since ceased after expiry of 60 days from the conclusion of the search. When the provisions of Sec.132(3) are very clear and unambiguous about the period of restraint and in the absence of any mandatory requirement of intimating the parties, it was not necessary to inform about the said fact.''

8. In the light of the stand taken by the respondent that the prohibitory order passed under Section 132(3) of the Income Tax Act on 5.7.2018 has lapsed after the expiry of 60 days, the Writ Petition stands allowed. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

Deputy Director of Income Tax
Investigation, Unit -3(2),
New No.46, Old No.108,
M.G.Road, Nungambakkam,
Chennai-34.

+1cc to Mr.A.P.Srinivas, Advocate, S.R.No.88320
+1cc to Mr.Madhan Babu, Advocate, S.R.No.88046

W.P.No.30692 of 2018

rrs 26/12/2018