IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.12.2018

CORAM

THE HONOURABLE MR.JUSTICE K.RAVICHANDRABAABU

Writ Petition Nos.31029 & 31030 of 2018
and
W.M.P.Nos.36206 & 36208 of 2018

Mr.R.Panneerselvam ... Petitioner in both the W.Ps.

vs.

1.The Director General of
Income Tax (Investigation)/
Chief Commissioner of Income Tax,
Income Tax Department,
No.46, Nungambakkam High Road,
Chennai - 600 034.

2.The Principal Commissioner of Income Tax
Central Circle- 1, Income Tax Department,
No.46, Nungambakkam High Road,
Chennai - 600 034.

3.The Assistant Commissioner of Income Tax
Central Circle - 3(3), Income Tax Department,
No.46, Nungambakkam High Road,
Chennai - 600 034.

4.The Tax Recovery Officer
Central - 1, Income Tax Department,
No.46, Nungambakkam High Road,
Chennai - 600 034.

5.The Commissioner of Income Tax (Appeals)-2
Income Tax Department
121, Nungambakkam High Road,
Chennai - 600 034.

.. Respondents in both W.Ps.

Common Prayer: Writ petitions filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, to call for the records of the 4th respondent in PAN: AAGPP 5343K and to quash the impugned notice/order issued u/s 226(3) of the Income Tax Act, 1961 in TRC No.957/12-13, 968/15-16, 971/16-17 dated 08.11.2018 on TANGEDCO.

For Petitioner in both W.Ps. : Mr.A.S.Sriraman

For Respondents in both W.Ps. : Mr.A.P.Srinivas, Standing Counsel (Income Tax)

COMMON ORDER

W.P.No.31029 of 2018 is filed against the order of the 4th respondent issued under Section 226(3) of the Income Tax Act, 1961 dated 08.11.2018, against one Mr.Rajnish Mehta, calling upon him to pay forthwith any amount due from him to the petitioner/assessee upto the amount of arrears of sum of Rs.1,35,02,995/- and also to pay any amount which may subsequently become due from the said person to the assessee.

2. W.P.No.31030 of 2018 is filed against the order of the 4th respondent dated 08.11.2018 issued under Section 226(3) of the Income Tax Act, 1961, wherein and whereby, the Garnishee Order was issued to the Superintendent Engineer, TANGEDCO, Thirumangalam, Chennai - 600 040, calling upon the said official to pay forthwith any amount due from TANGEDCO to the petitioner/assessee upto the amount of arrears of sum of Rs.1,35,02,995/- and also to pay any amount which may subsequently become due from the TANGEDCO to the petitioner.

3.Heard Mr.A.S.Sriraman, learned counsel appearing for the petitioner and Mr.A.P.Srinivas, learned Standing Counsel (Income Tax) appearing for the respondents.

4. The subject matter assessment years are 2003-04 to 2008-09. It is seen that the order of the assessment made in respect of assessment years 2003-04 to 2007-08 are culminated into Tax Case Appeals No.459 to 472 of 2016 and those Tax Case Appeals are pending before this Court, where it is stated that orders have been reserved. Insofar as the assessment year 2007-08 is concerned, the petitioner/assessee has filed an appeal before the First Appellate Authority and the said appeal is still pending. The claim of the revenue insofar as the assessment years 2003-04 to 2007-08 are concerned is that the petitioner is liable to pay the balance tax amount of Rs.44,59,285/-, apart from penalty of Rs.12,75,000/- out of the total amount of tax plus interest of Rs.1,24,99,540/-.

Likewise, in respect of assessment year 2008-09 is concerned, the claim of the revenue is that, out of the total payment of Rs.99,27,012/-, the petitioner is liable to pay the balance sum of Rs.83,16,190/- after giving credit to certain payments made by the assessee.

5.The contention of the petitioner before this Court is that when the tax case appeals are filed and the same were heard and reserved for orders, the impugned garnishee orders cannot be issued without waiting for an order to be passed by this Court insofar as the assessment years 2003-04 to 2007-08 are concerned. Likewise, it is contended that in respect of assessment year 2008-09 is concerned, the assessee has filed an appeal and the said appeal is pending before the said first Appellate Authority.

6.On the other hand, the learned counsel for the revenue contended that even though the appeal is filed by the assessee in respect of assessment year 2008-09, there is no stay granted by the Appellate Authority and therefore, there is no bar for the revenue to issue the impugned orders. The learned counsel, however, admitted to the position that insofar as assessment years 2003-04 to 2007-08 are concerned, the tax case appeals are heard and reserved for orders.

7. The grievance of the petitioner before this Court is that the impugned orders caused great hardship to the petitioner, more particularly, when the challenge to the assessment in respect of the subject matter assessment years has not attained the finality and on the other hand, it is pending before this Court as well as the First Appellate Authority as stated supra. Insofar as the Assessment Year 2003-04 to 2007-08 is concerned, it is seen that out of the total amount due viz., tax plus interest to the tune of Rs.1,24,99,540/- , it is admitted by the revenue that petitioner had already made payment to the tune of Rs.80,48,255/-. Therefore, the balance amount payable by the petitioner as admitted by the revenue itself is to the tune of Rs.44,51,285/-, apart from the penalty of Rs.12,75,000/-. Needless to state that when the liability itself is questioned and the same is the subject matter of the tax case appeals and those appeals are reserved for orders, this Court is of the view that action taken for realizing the said due viz., Rs.44,51,285/- plus Rs.12,75,000/- equal to Rs.57,26,285/- in assessment years 2003-04 to 2007-08, cannot be justified at present, as the issue has to be finally decided by this Court in the above tax case appeals where the matters are reserved for orders. Therefore, this Court is of the view that the impugned orders for realizing a sum of Rs.57,26,285/- cannot be sustained. At the same time, while coming to the assessment year 2008-09 is concerned, admittedly, the petitioner did not obtain

any stay from the First Appellate Authority. Now, it is stated that the balance payable by the assessee is to the tune of Rs.83,16,190/-.

8.Considering the above said facts and circumstances and considering the financial hardship being faced by the assessee in view of the impugned proceedings, this Court is of the view that interest of the both parties will be protected, if the petitioner is directed to pay a sum of Rs.15,00,000/- towards the assessment year 2008-09, without prejudice to their contention in the appeal before the First Appellate Authority for the purpose of lifting the impugned garnishee orders.

9. Accordingly, these Writ Petitions are allowed and the impugned orders are set aside, subject to condition the petitioner pays a sum of Rs.15,00,000/- (Rupees Fifteen Lakhs only) towards assessment year 2008-09 before the 4th respondent within a period of four weeks from the date of receipt of copy of this order. It is made clear that the said payment is without prejudice to the contentions of either parties in the above appeal pending before the Appellate Authority. If the petitioner fails to make payment within the time stipulated, the impugned orders stand restored automatically without reference to this Court. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

gsi/vsi

To

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Chief Commissioner of Income Tax,
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+1cc to Mr.A.P.Srinivas, Advocate sr.no.85157
+1cc to Mr.R.Sridhar, Advocate sr.no.85287

W.P.Nos.31029 & 31030 of 2018

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