

In the High Court of Judicature at Madras

Dated : 21.1.2019

Coram :

The Honourable Mr.Justice T.S.SIVAGNANAM
and

The Honourable Mr.Justice N.SATHISH KUMAR

Writ Petition Nos.1392, 1397, 1401, 1404, 1408, 1410 and 1416 of
2019 &

WMP.Nos.1552, 1554, 1556, 1558, 1560, 1561, 1563 to 1570 of 2019

J.Dinakaran

...Petitioner in
all the WPs

Vs

- 1.The Registrar, Income Tax Appellate
Tribunal, A Bench, Chennai.
- 2.The Commissioner of Income Tax
(Appeals)-19, Chennai-34.
- 3.The Assistant Commissioner of Income
Tax, Central Circle 3(2), 46, Mahatma
Gandhi Road, Chennai-34.

....Respondents in
all the Wps

PETITIONS under Article 226 of The Constitution of India
praying for the issuance of Writs of Certiorari to call for the
records on the file of the first respondent in connection with
the common order dated 21.12.2018 made in S.P.Nos.393 to
399/Chny/2018 in ITA.Nos.2841 to 2847/Chny/2018 for the
assessment years from 2009-10 to 2015-16.

For Petitioner : Mr.R.C.Paulkanagaraj

For Respondents 2 & 3 : Mr.A.P.Srinivas, SSC

COMMON ORDER

(Order of the Court was made by T.S.SIVAGNANAM,J)

These writ petitions have been filed by the assessee
challenging the common order dated 21.12.2018 passed by the
Income Tax Appellate Tribunal, 'A' Bench, Chennai (hereinafter

called the Tribunal) in the stay petitions filed by the assessee in S.P.Nos.393 to 399/Chny/2018 in ITA.Nos. 2841 to 2847/Chny/2018 for the assessment years from 2009-10 to 2015-16.

2. The assessee filed petitions before the Tribunal praying for stay of the outstanding demand of Rs.9,33,16,430/-. The Tribunal, by the impugned common order, after taking note of the hardship faced by the assessee on account of attachment of the bank accounts, granted stay of the demand subject to payment of instalment of Rs.50 lakhs payable on or before 30th/ 31st of every English calendar month and the first instalment should be paid on or before 31.12.2018. Being aggrieved by the said condition, the assessee is before this Court by way of these writ petitions.

3. We have heard Mr.R.C.Paulkanakaraj, learned counsel assisted by Mr.S.Selvathirumurugan, learned counsel for the petitioner and Mr.A.P. Srinivas, learned Senior Standing Counsel accepting notice for respondents 2 and 3.

4. The short issue, which falls for consideration, is as to whether the condition imposed by the Tribunal for grant of stay can be stated to be an onerous condition.

5. The assessee's case is that after the search was conducted, the assessee filed revised returns for all the assessment years and paid a sum of Rs.10,12,88,401/-. The Assessing Officer completed the assessment vide order dated 29.12.2016 determining the total tax payable at Rs.57,49,72,097/-. After giving credit to the amount paid by the assessee namely Rs.10,12,88,401/-, the remaining amount of Rs.47,56,83,690/- is payable.

6. At the time of filing the appeals as against the assessment orders i.e after 29.12.2016, the assessee paid a total sum of Rs.7,15,18,818/-. The appeals filed by the assessee before the Commissioner of Income Tax (Appeals) [for brevity, the CIT(A)] were partly allowed vide orders dated 30.7.2018, as against which, the assessee preferred appeals before the Tribunal, in which, the stay petitions were filed, and they were disposed of by the Tribunal vide the common impugned order.

7. The case of the assessee is that the CIT(A) did not appreciate the documents submitted by the assessee namely the balance sheet along with return of income wherein the assessee adopted accretion of net asset method for the purpose of computing the taxable income as the books of accounts were not properly maintained earlier to the search operations. Further, the assessee would contend that the other documents, which were produced by the assessee, were not considered by the CIT(A). So far as the prayer for stay is concerned, the assessee contended

that on account of various factors, his business operations were very much affected, that the bank account was also frozen and that consequently, he was unable to carry on business.

8. On a perusal of the common impugned order, we find that the Tribunal accepted the assessee's case that he is facing hardship on account of attachment of bank account. However, while granting stay order, the Tribunal imposed a condition that a sum of Rs.50,00,000/- should be paid on or before 30th/31st of every English calendar month. What is to be noted is that the Tribunal has not fixed any outer time limit for the amounts to be paid by the assessee for being entitled to an order of stay.

9. On a reading of the common impugned order, one can understand that the Tribunal directed the assessee to pay the entire outstanding in instalments of Rs.50 lakhs in every English calendar month. In our considered view, while granting an interim order, what is required to be seen is as to whether the assessee made out a prima facie case, as to whether the balance of convenience is in favour of the assessee and as to whether the assessee will be put to irreparable hardship if the interim order is not granted. Further, the Tribunal does not record any finding that the assessee has not made out a prima facie case. So far as the aspect of hardship is concerned, the Tribunal itself was conscious of the fact that on account of attachment of the bank account, the assessee was put to hardship. The third aspect namely balance of convenience has not been adverted to by the Tribunal.

10. In any event, we are of the considered view that if the entire balance outstanding is directed to be paid, it may render the appeal petitions themselves as infructuous. Therefore, while granting a reprieve to the assessee, we also intend to protect the interests of the Revenue by slightly modifying the order passed by the Tribunal.

11. Accordingly, the writ petitions are disposed of by directing the petitioner to pay a sum of Rs.3,00,00,000/- (Rupees three crores only) in two instalments. The first instalment of Rs.1,00,00,000/- (Rupees one crore only) shall be paid on or before 31.1.2019. The remaining amount of Rs.2,00,00,000/- (Rupees two crores only) shall be paid either in one lumpsum or in two instalments on or before 15.3.2019. If the assessee complies with the above conditions within the time stipulated, there will be a stay in respect of the remaining amount as demanded. If the petitioner does not comply with the above conditions within the time stipulated, the benefit of this order will not enure to the petitioner and the writ petitions shall stand automatically dismissed. The Tribunal shall take

note of this order and accordingly fix the date for hearing of the appeals. No costs. Consequently, the connected WMPs are closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

RS

To

1.The Registrar,
Income Tax Appellate Tribunal,
A Bench, Chennai.

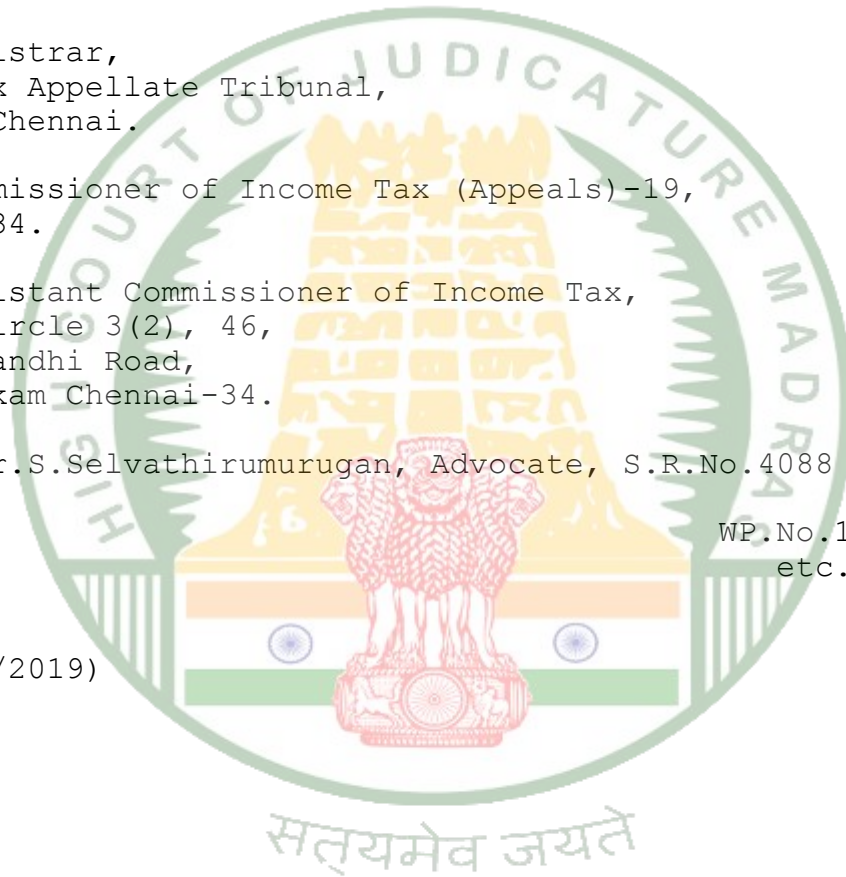
2.The Commissioner of Income Tax (Appeals)-19,
Chennai-34.

3.The Assistant Commissioner of Income Tax,
Central Circle 3(2), 46,
Mahatma Gandhi Road,
Nungambakkam Chennai-34.

+3cc to Mr.S.Selvathirumurugan, Advocate, S.R.No.4088

WP.No.1392 of 2019
etc. cases

PP(CO)
GSP(23/01/2019)



WEB COPY