IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 14.02.2019

CORAM

THE HONOURABLE DR.JUSTICE ANITA SUMANTH

Writ Petition No.3670 of 2019
and
WMP.Nos.4025 & 4027 of 2019

M.Ravechandran ... Petitioner

-vs-

1. The Principal Commissioner of Income-Tax,
Income Tax Department,
No.3, Gandhi Road, Salem.

2. The Assistance Commissioner of Income-Tax,
OSD, Income Tax Department,
Salem.

3. The Assistance Commissioner of Income-Tax,
Circle-2(1), Income Tax Department,
Salem.

4. The General Manager,
Salem Steel Plant,
Sarkar Kollapatty,
Near Mohan Kumaramangalam Medical College,
Salem - 636 013. .. Respondents

Prayer:- PETITION filed under Article 226 of The Constitution of India praying for the issuance of Writ of Certiorarified Mandamus calling for the records relating to the impugned notice under Section 226(3) of the Income Tax Act, 1961 dated 18.09.2018 and subsequent modified notice dated 09.11.2018 and issued to the fourth respondent by the 3rd respondent herein relating to the assessment year 2012-2013 and quash the same and directing the respondents 1 to 3 not to initiate any further proceedings for recovery of the disputed demand till the disposal of the appeal before the 1st respondent.

For Petitioner : Mr.D.Baskar

For Respondents : Mr.A.P.Srinivas for R1 to R3.

O R D E R

This writ petition challenges attachment notices under section 226(3) of the Income Tax Act, 1961 (in short the 'Act') dated 18.09.2018, subsequently modified by notice dated 09.11.2018 issued to the General Manager, Salem Steel Plant, Sarkar Kollapatty, Salem directing the plant to recover 1/3 of net remittances made by it to the petitioner/assessee under the Act, towards Income Tax dues of the petitioner and remit the same to the Income tax Department.

2. The petitioner is engaged in business of civil contract in the name and style of 'M/s.Deivaanai Engineering Company at Mettur Dam, Salem. The returns filed by the petitioner for the assessment year 2012-13 was taken up for scrutiny under CASS by the Assessing Officer and an assessment completed by order dated 18.03.2015 making an addition of Rs.1,20,000/- to the income assessed by the petitioner.

3. Finding the assessment erroneous and prejudicial to the interests of the Revenue, the Principal Commissioner of Income Tax under section 263 of the Act set aside the same directing the Assessing Officer to redo the assessment vide his order dated 30.03.2017. Thereafter, the Assessing Officer, after issuing notice and affording an opportunity of personal hearing to the petitioner, passed an order of assessment dated 14.12.2017 raising a demand of Rs.46,12,390/- where the tax component amounts to Rs.37,19,234/- and the balance interest. Aggrieved by the same, the petitioner has preferred an appeal before the Commissioner of Income Tax (Appeals) along with a petition to condone the delay of 13 days in filing the same, which is still pending.

4. In the meantime, the third respondent has issued a garnishee order under section 226(3) of the Act dated 18.09.2018 calling upon the Salem Steel Plant to deposit all amounts payable by it to the petitioner or held by it on behalf of the petitioner. The petitioner appears to have made a request to the Assessing Officer for a stay of the disputed demand citing financial difficulty and liquidity issues, upon consideration of which, the order dated 18.09.2018 was partially modified directing that the Salem Steel Plant to recover and remit one third of net remittances made by the Plant to the petitioner.

5. Mr. D.Baskar, learned counsel for the petitioner states that the demand itself is disputed and is pending in appeal before the Commissioner of Income tax (Appeals). Mr.A.P.Srinivas, learned counsel for the respondents 1 to 3 reports instructions received on behalf of the department to the

effect that the appeal filed by the petitioner is belated and a petition for condonation of delay in filing the appeal is pending before the CIT(Appeals).

6. Upon hearing the learned counsel and in the interests of justice, this Writ Petition is disposed of finally directing the petitioner to remit a sum of Rs.10,00,000/- (Rupees Ten Lakhs only) as against the total demand of Rs.46,12,390/- as per the order of assessment dated 14.12.2017 under Section 143(3) r/w.263 of the Income Tax Act, 1961.

7. The amount shall be paid within a period of four (4) weeks from the date of the receipt of a copy of this order. Any amount that has been remitted by the 4th respondent, the Salem Steel Plant, pursuant to notice dated 09.11.2018 issued by the Assistant Commissioner of Income Tax Circle-2(1) Salem shall be given credit to in computing the aforesaid amount of Rs.10,00,000/-. Connected W.M.P is closed. No costs.

Sd/-

Deputy Registrar

//True Copy//

Sub Assistant Registrar

rkp/sl

To

1. The Principal Commissioner of Income-Tax,
Income Tax Department,
No.3, Gandhi Road, Salem.

2. The Assistance Commissioner of Income-Tax,
OSD, Income Tax Department,
Salem.

3. The Assistance Commissioner of Income-Tax,
Circle-2(1), Income Tax Department,
Salem.

+1cc to Mr.R.Thamarai Selvan, Advocate, S.R.No.13584
+1cc to Mr.A.P.Srinivas, Advocate, S.R.No.13524

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