IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 28.03.2019

Coram

The Honourable Dr.Justice ANITA SUMANTH

W.P.No.7664 of 2019
and
W.M.P.Nos.8292 & 8294 of 2019

Mr.Ranvir R Shah
...Petitioner

Versus

The Assistant Commissioner of Income Tax,
Non-Corporate Circle 14(i/c),
Chennai - 600 034.
...Respondent

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus to call for the records of the respondent for the AY-2012-13 in No.AAMPS5511Q in his order passed under Section 143(3) r.w.s.147 of the Income Tax Act, 1961 dated 26.02.2019 on the files of the respondent and quash the same and direct the respondent not to enforce the demand if any pending disposal of this writ petition.

For Petitioner : Mr.V.S.Jayakumar

For Respondent : Mr.J.Narayanaswamy

O R D E R

This Writ Petition is disposed of finally at the stage of admission by concurrence expressed by Mr.V.S.Jayakumar, learned counsel for petitioner/assessee and Mr.J.Narayanaswamy, learned Senior Standing counsel for respondent/Income Tax Department.

2. The prayer sought for in this writ petition is as against the order of re-assessment dated 26.02.2019 for Assessment Year 2012-2013 passed under Section 143(3) r.w.s 147 of the Income Tax Act, 1961 (hereinafter referred to as 'Act'). The procedure set out under statute and by the Supreme Court in the case of GKN Driveshafts (India) Ltd. Vs. Income Tax Officer & Ors. reported in (2003) 259 ITR

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0019 has not been complied with, since the assessee in this case has not filed a return of income pursuant to receipt of notice under section 148 of the Act. I am thus not inclined to entertain this Writ Petition at all and indicated as much as on 15.03.2018 when the matter was listed for admission.

3. At the request of learned counsel for petitioner, the matter was adjourned to today, 28.03.2019. In the meantime, it appears that the petitioner has filed a statutory Appeal before the Commissioner of Income Tax (Appeals) challenging the order of re-assessment and filed an application for stay of recovery of the disputed amount under Section 220(2) of the Act before the Assessing Officer.

4. Mr.Narayanasamy, confirms that an order appears to have been passed by the respondent rejecting the application for stay on 27.03.2019 and simultaneous therewith notices attaching the bank accounts of the petitioner in the Punjab National Bank have also been issued under Section 226(3) of the Act. The petitioner has not received the aforesaid order.

5. Admittedly, the period for filing of the statutory appeal is till 30.03.2019. As such, I am prima facie of the view that the coercive recovery action initiated by the Assessing Officer on 27.03.2019, even prior to the expiry of the thirty day period provided for filing of appeal and service of the order of rejection of stay application upon the assessee, is premature.

6. Be that as it may, the petitioner only seeks some interim measure of protection from coercive recovery pending first appeal.

7. In view of the facts and circumstances as noted by me above, the authorities are directed not to initiate any further coercive measures for recovery of the disputed demand for a period of three weeks from today, during which time it is open to the petitioner to move the respective authorities for appropriate orders of interim protection. The attachment of the Bank Account on 27.03.2019 will continue, subject to further orders that may be passed by the authorities after hearing the petitioner upon its application for stay/appeal.

8. The learned counsel for respondent is directed to supply a copy of the order stated to have been passed by the Assessing Authority on 27.03.2019 rejecting the petitioners' stay application, forthwith.

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9. In the result, this Writ Petition is disposed of in the above terms. However, there shall be no order as to costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CS iii)

//True Copy//

Sub Assistant Registrar

mrr/sai

To
The Assistant Commissioner of Income Tax,
Non-Corporate Circle 14(i/c),
Chennai - 600 034.

+1cc to Mr. V.S.Jayakumar, Advocate SR.No. 30009
+1cc to Mr. J.Narayanaswamy, Advocate SR.No. 30305

W.P.No.7664 of 2019
and
W.M.P.Nos.8292 & 8294 of 2019

A.SK(01/04/2019)

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