IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.06.2019

CORAM

THE HONOURABLE MR.JUSTICE M.SUNDAR

W.P.NO.13319 OF 2019
AND WMP.NOS. 13427, 13428 AND 13429 OF 2019

Mr.M.Kiran Kumar ... Petitioner

vs.

1. The Assistant Commissioner of Income Tax,
Central Circle - 1(4),
M.G.Road, Chennai - 600 034.

2. The Commissioner Income Tax (Appeals) -18,
Chennai.

3. The Commissioner of Income Tax,
Central - 1, Room No.301, 3rd Floor,
No.46, M.G.Road,Chennai - 600 034.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus, call for the records of the 3rd respondent dated 25.03.2019 in C.No.1571/PCIT/C-1/25/2018-19 and quash the same and consequently restrain the 1st respondent from enforcing the demand raised against the petitioner for AY 2015-16 vide demand notice dated 30.12.2016 in pursuance of the assessment order dated 30.12.2016 in PAN No.ACHPM2247E which is the subjet matter of the appel pending before the 2nd respondent in ITA.No.510/16-17.

For Petitioner : Mr.R.Gopinath
for M/s.MCGAN Law Firm

For Respondents : Mr.A.N.R.Jayaprathap
Junior Standing counsel(Income Tax)

ORDER

Mr.R.Gopinath, learned counsel of M/s.McGan Law Firm on behalf of writ petitioner and Mr.A.N.R.Jayaprathap, junior standing counsel (Income Tax) on behalf of the three respondents are before this Court.

2. With the consent of learned counsel on both sides, the main writ petition itself is taken up, heard out and is being disposed of. The entire matter turns on a very narrow compass.

3. The writ petitioner assessee, who is an individual, was assessed under Section 143(3) read with Section 153B(1)(b) of 'Income Tax Act, 1961' (hereinafter 'said Act' for brevity).

4. Against assessment order made by the original authority, the writ petitioner had preferred an appeal on the file of the second respondent i.e., Commissioner Income Tax (Appeals) -18, Chennai.

5. Pending appeal, the assessee took out an application for interim stay of demand, but the prayer was not acceded to in his favour. Therefore, the assessee has filed the instant writ petition assailing the order dated 25.03.2019 bearing reference C.No.1571/PCIT/C-1/25/2018-19 made by the second respondent not acceding to the prayer for interim stay.

6. When the writ petition came up for admission, my predecessor learned judge passed an order dated 25.04.2019, which reads as follows:

> 'Heard Mr.Muralikumaran, learned counsel for petitioner and Mr.A.P.Srinivas, learned Senior Standing Counsel for respondents.
>
> 2. Out of the disputed demand of Rs.38 crores (approximately), the petitioner has admittedly, remitted a sum of Rs.6 crores. The balance outstanding as per the proceedings of the Principal Commissioner of Income Tax dated 25.03.2019, is a sum of Rs.3 crores. Mr. Muralikumaran, learned counsel for petitioner only seeks some time to pay the same and learned counsel for the respondent does not raise any serious objection to this request. The petitioner is permitted to remit an amount of Rs.1 ½ crores on or before 10.05.2019 and the balance of Rs. 1 ½ crores on or before 07.06.2019.
>
> 3. List the matter 'for compliance' on 10.06.2019. Counter, if any, be filed by then.'

7. What is of relevance is paragraph 2 of the order made by my predecessor learned Judge.

8. There is no dispute or disagreement before this Court today that the conditions imposed vide paragraph 2 of the aforesaid order has since been complied with or in other words,

a sum of Rs.1 ½ Crores has since been paid by the writ petitioner before 07.06.2019. Therefore, the interim stay granted pending appeal on the file of the second respondent is now operating.

9. Learned counsel for revenue submits that it may be desirable to have the appeal heard out and disposed of expeditiously and requested that there be a direction in this regard.

10. Learned counsel for writ petitioner, on instructions, submits that the writ petitioner assessee would cooperate for early disposal of the appeal now pending on the file of the second respondent.

11. Therefore the following orders is passed:

a) Impugned order dated 25.03.2019 bearing reference C.No.1571/PCIT/C-1/25/2018-19 is set aside.

b) Second respondent is directed to dispose of the main appeal preferred by the writ petitioner assessee being ITA No.510/2016-17 as expeditiously as possible and in any event, within a period of three months from the date of receipt of a copy of this order after affording an opportunity to the writ petitioner assessee, which will include personal hearing.

12. Interim order of stay qua order of original authority/demand, which is now operating owing to compliance of the writ petitioner with the conditions imposed vide order dated 25.04.2019(extracted and reproduced supra) made vide earlier proceedings in instant writ petition will continue to operate till the disposal of the aforesaid appeal before the second respondent.

13. With the above observations, instant writ petition is disposed of. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

mp/rm

To

1. The Assistant Commissioner of Income Tax,
   Central Circle – 1(4),
   M.G.Road, Chennai – 600 034.

2. The Commissioner Income Tax (Appeals) -18,
   Chennai.

3. The Commissioner of Income Tax,
   Central – 1, Room No.301, 3rd Floor,
   No.46, M.G.Road, Chennai – 600 034.

+1cc to M/s.MCGAN Law Firm, Advocate, S.R.No.47333
+1cc to Mr.A.P.Srinivas, Advocate, S.R.No.48166

W.P.No.13319 of 2019
and WMP.Nos. 13427, 13428 and 13429 of 2019

LN(CO)
CS/24/07/2019