IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 10.06.2019

Coram
THE HONOURABLE MR. JUSTICE M.SUNDAR
W.P.No.13847 of 2018
and W.M.P.No.16353 of 2018

Shri.R.Shanmugam
.. Petitioner

vs.

1. Principal Commissioner of Wealth Tax,
63, Race Course Road,
Coimbatore - 641 018.

2. Deputy Commissioner of Wealth Tax,
Corporate Circle - I,
Coimbatore.
... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari, calling for the records relating to the Order passed by the 1st respondent in the revision application filed under Section 25 of the Wealth Tax Act dated 23.03.2018 in C.No.120(8)/PCIT-1/CBE/2016-17 and quash the same and pass such further other orders as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case and thus render justice.

For Petitioner : Mr. Niranjan Rajagopalan
for M/s.G.R.Associates

For Respondent : Mr.A.N.R. Jayaprathap,
Junior Standing Counsel for Income Tax

O R D E R

Mr.Niranjan Rajagopalan, learned counsel of M/s.G.R.Associates [Law Firm] on behalf of the writ petitioner and Mr.A.N.R.Jayaprathap, learned Junior Standing Counsel for Income Tax on behalf of both the respondents are before this Court. To be noted, there are two respondents in this writ petition and both the respondents are official respondents.

2. This case was listed under the caption 'ADJOURNED ADMISSION' before this Court today. Be that as it may, with the consent of learned counsel on both sides, the main writ petition itself is taken up and disposed of.

3. Short facts imperative for disposal of the instant writ petition alone are set out.

4. An order dated 23.03.2018 bearing Reference No.C.No.120(8)/PCIT-1/CBE/2016-17 made by the first respondent (hereinafter 'impugned order' for the sake of brevity, convenience and clarity) has been called in question in the writ petition.

5. There is no dispute or disagreement that the impugned order of the first respondent is an order that has been made under Section 25 of 'The Wealth Tax Act, 1957' (hereinafter 'said Act' for brevity).

6. To be noted, the impugned order has been made by the first respondent in exercise of revisional powers in a revision petition under Section 25 of said Act.

7. It may be necessary to read this order in conjunction with and in continuation of proceedings made by my predecessor learned Judge on 08.06.2018. Proceedings made by my predecessor learned Judge on 08.06.2018 reads as follows:

> 'Mr.A.N.R.Jaya Pratap, learned Standing Counsel accepts notice for the respondents and seeks time to get instructions.
>
> 2. The learned counsel for the petitioner is directed to file documents duly supported by an affidavit to prove their stand that the properties in question are agricultural lands at the relevant time. This is required, as the assessee for the first time before this Court, raised such a plea that the lands are agricultural lands without specifically pleading so in the revision application filed under Section 25 of the Wealth Tax Act, List on 25.06.2018'

8. Thereafter, there had been hearings before other predecessor learned Judges.

9. Be that as it may, pursuant to the aforesaid 08.06.2018 proceedings, the writ petitioner has now filed an additional affidavit.

10. After the additional affidavit, the Revenue has filed a counter affidavit dated 13.07.2018. Contents of the additional affidavit pertaining to the agricultural land plea have been met by the Revenue counsel in paragraph 4 of the counter affidavit and the relevant portion of paragraph 4 of the counter affidavit reads as follows:

> '......The Act mentions that urban land does not include land classified as agricultural land in the records of the Government and used for agricultural purposes. As held by various Court rulings, a land may be agricultural land on Revenue records, however, if it is not cultivated, it cannot be held to be agricultural land. The petitioner has not claimed to have cultivated the lands, but he only claims that the lands are agricultural lands. The petitioner himself had in the Wealth tax returns declared the lands as 'vacant sites'. Therefore, the lands have been rightly brought to tax as urban lands, going by the definition of urban land as envisaged under the Wealth Tax Act, 1957.....'

11. From the aforesaid trajectory of the hearing in the writ petition as well as the rival plea pertaining to the agricultural land plea, which has admittedly been taken for the first time post impugned order, it comes out clearly that the matter turns on certain factual disputes.

12. Learned counsel for writ petitioner submits that the term 'assets' is defined in Sections 2(e) and 2(e a) of said Act.

13. In the light of the order, which this Court now proposes to pass, this Court refrains from expressing any opinion with regard to plea which is being advanced by the writ petitioner.

14. It will suffice to notice that according to the writ petitioner the plea advanced by the writ petitioner in this regard turns on certain exceptions that have been provided qua assets.

15. In the light of new plea, it is also noticed that learned counsel for writ petitioner fairly submits that the writ petitioner's case pertains to assessment year 2008-09 and subsequently in 2011, the land in question has been converted qua use. This statement is also noticed, which means, post 2011, there will be no claim by the writ petitioner under said Act.

16. In the light of the aforesaid trajectory and the narrative thus far, this Court passes the following order:

a) the impugned order made by the first respondent being order dated 23.03.2018 bearing Reference No.C.No.120(8)/PCIT-1/CBE/2016-17 is set aside. Though obvious, it is made clear that impugned order is set aside solely for the purpose of facilitating the authority to hear afresh (in the light of new plea raised by writ petitioner).

b) first respondent is directed to hear the revision afresh in the light of the additional/new plea which the writ petitioner has raised, i.e., plea that the land in question is agricultural land.

c) it is made clear that all pleas, arguments and questions pertaining to the agricultural land new plea of the writ petitioner are left open to be agitated before the first respondent revisional authority and the revisional authority shall consider the same and decide on the same in accordance with law.

d) the revisional authority shall afford an opportunity of personal hearing to the writ petitioner before passing orders afresh.

e) entire aforesaid exercise shall be completed within a period of three months from the date of receipt of a copy of this order.

f) a copy of the decision made/order passed afresh by the first respondent shall be served on the writ petitioner with due acknowledgement within seven working days from the date of the order.

Writ petition is disposed of with the above directions. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

vsm

To

1. The Principal Commissioner of Wealth Tax,
   63, Race Course Road,
   Coimbatore - 641 018.

2. The Deputy Commissioner of Wealth Tax,
   Corporate Circle - I,
   Coimbatore.

+1cc to M/s.G.R.Associates , Advocate SR.No. 46727
+1cc to Mr.A.P.Srinivas , Advocate SR.No. 46557

W.P.No.13847 of 2018
and W.M.P.No.16353 of 2018

nrjk (CO)
A.SK(08/07/2019)