IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.10.2019

CORAM

THE HON'BLE MR. JUSTICE K.RAVICHANDRABAABU

W.P.No.19393 of 2018
and
W.M.P.Nos.22805 & 22806 of 2018

K.T.Kunjumon
S/o.Thomas ...Petitioner

vs.

1. The Assistant Commissioner of Income Tax
Central Circle 1(4)
No.46, Mahatma Gandhi Salai,
Nungambakkam, Chennai-600 034.

2. The Tax Recovery Officer,
Central-1,
Room No.321, 3rd Floor
New No.46, Mahatma Gandhi Road,
Chennai-600 034. ...Respondents

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records on the file of the second respondent in TRO/Misc/2018-2019 issuing the impugned proceedings dated 05.06.2018, quash the same as illegal, arbitrary and devoid of merit and direct the second respondent to recalculate the interest under Section 220(2) of the Income Tax Act, 1961 for the impugned block assessment period from 01.04.1986 to 31.03.1996 from the date immediately following the end of the period mentioned in the demand notice under Section 156 of the Income Tax Act, 1961 with respect to the final assessment order dated 30.10.2009.

For Petitioner : Mr.R.Sivaraman

For Respondents : Mr.A.P.Srinivas
standing counsel

O R D E R

This writ petition is filed challenging the proceedings of the second respondent dated 05.06.2018, wherein and whereby, the petitioner was requested to redeem the documents and submit the same before the Department so as to enable the Department to proceed with sale of property by auction and adjust the sale proceeds towards the Income tax dues. While making such intimation, the second respondent has also referred to the payment of interest as if to be calculated from 01.03.1999 onwards from the date of the original assessment order. Therefore, the present writ petition is filed challenging the said communication mainly by contending that the original assessment order having been set aside, interest under Section 220(2) of the Income Tax Act, 1961, ought to be calculated only from the final assessment order dated 30.10.2009 and not from 01.03.1999, as referred to in the impugned communication. By making such contention, the present writ petition is filed with further direction to the respondents to recalculate the interest under Section 220(2) of the Income Tax Act, 1961, for the impugned block assessment period from 01.04.1986 to 31.03.1996.

2. The second respondent filed a counter affidavit and also an additional counter affidavit. The stand taken by the second respondent in the counter affidavit is that the communication challenged in this writ petition is not proceedings and only a communication informing the Assessee about the potential interest liability arising on account of the outstanding demand pending in his case and that the working is only a tentative calculation made on the basis of available record. It is further stated in the counter affidavit that the final working of interest chargeable under the provisions of Section 220(2) and also under the other provisions of the Act would be computed only after payment of outstanding tax demand and the same would be communicated to the petitioner by way of an order/proceedings. Thus, it is stated by the second respondent that the impugned communication is only tentative working and it is only a communication and not an order and hence, there is no cause of action for the petitioner to approach this Court and file the present writ petition.

3. Mr.R.Sivaraman, learned counsel for the petitioner submitted that the tenure of the communication challenged in this writ petition would show that the second respondent has already taken a decision to levy interest from 01.03.1999 onwards and therefore, the petitioner has rightly filed the present writ petition. However, he is not disputing the fact that the petitioner has made their objections dated 11.06.2018 in response to the impugned communication, more particularly, disputing the date from which, interest has to be calculated.

4. Mr.A.P.Srinivas, learned standing counsel for the respondents submitted that the impugned communication is not an order/proceedings and therefore, it is premature for the petitioner to approach this Court and seek relief, more particularly, by asking this Court to decide as to from which date, the interest has to be calculated. He thus, submitted that only when an order is passed adjudicating levy of interest, the petitioner has to canvass the correctness or

otherwise of the said order before appropriate forum. Thus, he submitted that the impugned communication is only tentative calculation made based on the available record and however, final working of interest chargeable under the provisions of Section 220(2) would be computed only after payment of outstanding tax due and the same would be communicated to the petitioner by way of an order/proceedings.

5. Considering the above stated facts and circumstances, more particularly, the stand taken by the Revenue in their counter in respect of the impugned communication dated 05.06.2018, it clearly indicates that it is only a tentative calculation made and that the final working of interest chargeable would be computed only after payment of outstanding tax and the same would be communicated to the petitioner by way of an order/proceedings. Hence, I find that the present writ petition challenging the impugned communication is highly premature. Accordingly, this Writ Petition is disposed of, without expressing any view on the merits of the contentions raised by both parties, however, by granting liberty to the petitioner to work out his remedy as and when the demand of interest is made by issuing an order/proceedings. It is made clear that the disposal of this writ petition as observed supra, will not stand in the way of the Revenue to collect the tax dues from the petitioner in a manner known to law. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

mk
To

1. The Assistant Commissioner of Income Tax
Central Circle 1(4)
No.46, Mahatma Gandhi Salai,
Nungambakkam, Chennai-600 034.

2. The Tax Recovery Officer,
Central-1,
Room No.321, 3rd Floor
New No.46, Mahatma Gandhi Road,
Chennai-600 034.

+1cc to Mr.A.P.Srinivas, Advocate Sr.87405

W.P.No.19393 of 2018

ln[co]
srg 21/11/2019