

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.12.2019

CORAM :

THE HONOURABLE DR.JUSTICE ANITA SUMANTH

W.P.No.21779 of 2019
and
WMP.No.20989 of 2019

N.Guhan

... Petitioner

Vs.

1.The Assistant Commissioner of Income-Tax,
Non-Corporate Circle-13(1),
Room No.508, Wanaparthi Block,
5th Floor, Ayakar Bhavan,
No.121, Mahatma Gandhi Road,
Nungambakkam, Chennai - 600 034.

2.The Commissioner of Income Tax,
Appeals-14,
5th Floor, Ayakar Bhavan,
No.121, Mahatma Gandhi Road,
Nungambakkam, Chennai - 600 034.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, for the issuance of Writ of Mandamus, to direct the First Respondent from taking any further action or claim against the Petitioner herein, pending disposal of the Appeal dated 15.05.2019 filed by the Petitioner before the Second Respondent in the matter of Shri.N.Guhan - PAN - AIDPG9933H - Assessment Year 2010-11, before the Second Respondent.

For Petitioner :Mr.K.G.Raghunath

For Respondents :Mrs.Hema Muralikrishnan
Senior Standing Counsel

ORDER

The petitioner has sought a mandamus as against the 1st respondent forbearing him from taking any action, pending disposal of appeal dated 15.05.2019 before the Commissioner of Income Tax (Appeals).

2.The petitioner has rightly challenged the orders of assessment dated 31.03.2015 and penalty dated 29.09.2015 in terms of Sections 271(1)(c), 271(1)(b) and 271F before the Commissioner of Income Tax (Appeals). These appeals are stated to be numbered as (i)CIT(A), Chennai - 14/0045/2019-2020, (ii) CIT(A), Chennai - 14/0044/2019-20, (iii) CIT(A), Chennai - 6/10035/2019-2020 and (iv)CIT(A), Chennai - 6/10034/2019-2020.

3.I am of the considered view that pending appeal, it would be appropriate for the petitioner to have approached the appellate authority for consideration of appropriate interim orders. This Court, in the case of Paulsons Litho Works v. Income-Tax Officer and others, (208 ITR 676) has considered the question of grant of interim protection by an appellate authority, concluding that authority is vested with all incidental and ancillary powers of grant of interim orders, pending appeal.

4.This writ petition is thus dismissed, however granting liberty to the petitioner to approach the Commissioner of Income Tax (Appeals) within a period of two weeks from today with an application of stay, if he so desires.

5.Mrs.Hema Muralikrishnan, learned Senior Standing Counsel appearing for the respondents points out that all appeals are belated. This is admitted by the petitioner. In such circumstances, the question of grant of stay would be conditional upon the appellate authority first condoning the delay and admitting the appeal for consideration on merits.

6.Thus the following directions are issue:

(i)the petitioner is permitted to file an application for stay within a period of two weeks from today.

(ii) such stay applications, if filed, shall be listed for hearing by the Commissioner of Income Tax (Appeals) along with the petitions for condonation of delay and after hearing the petitioner, the question of condonation of delay shall be decided as a preliminary issue and the question of stay thereafter, if at all.

(iii)Let the above exercise be concluded within a period of twelve weeks from today i.e. on or before 10.02.2020. Let no recovery proceedings be taken in the interim i.e. till 10.02.2020.

7.This writ petition is disposed in the above terms. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

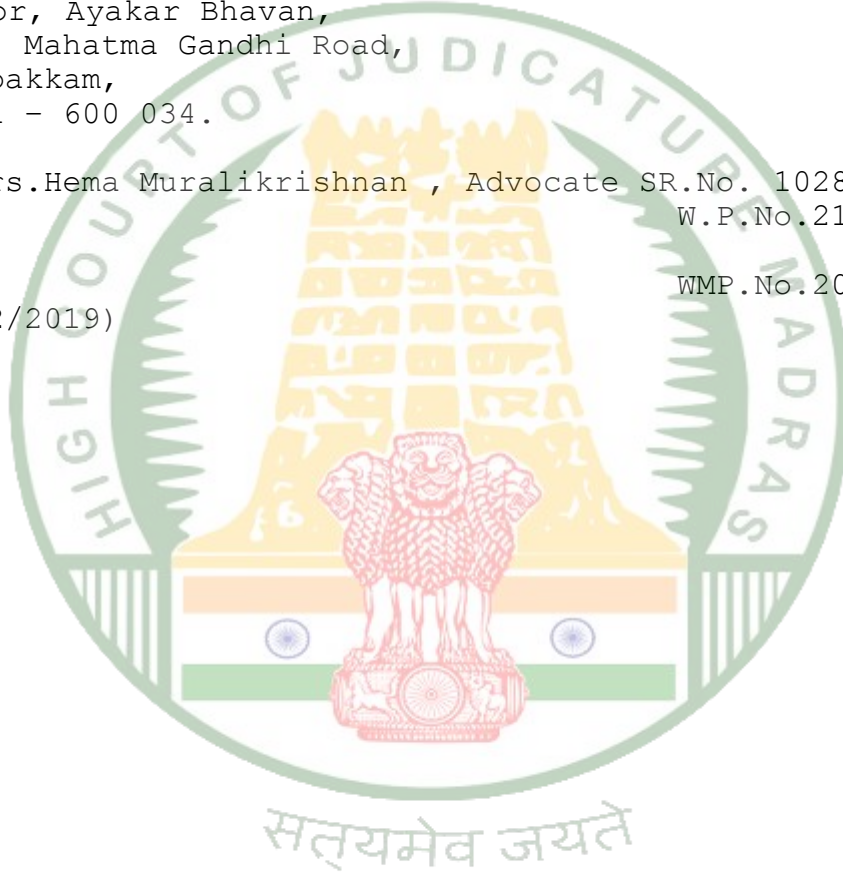
vs

To

1.The Assistant Commissioner of Income-Tax,
Non-Corporate Circle-13(1),
Room No.508, Wanaparthi Block,
5th Floor, Ayakar Bhavan,
No.121, Mahatma Gandhi Road,
Nungambakkam,
Chennai - 600 034.

2.The Commissioner of Income Tax,
Appeals-14,
5th Floor, Ayakar Bhavan,
No.121, Mahatma Gandhi Road,
Nungambakkam,
Chennai - 600 034.

+lcc to Mrs.Hema Muralikrishnan , Advocate SR.No. 102888
W.P.No.21779 of 2019
and
WMP.No.20989 of 2019
A.SK(12/12/2019)



WEB COPY