IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.10.2019

CORAM

THE HON'BLE MR. JUSTICE K.RAVICHANDRABAABU

W.P.No.24316 of 2019
and
W.M.P.No.24069 of 2019

Shanmugam Ramasamy
S/o.Ramasamy ...Petitioner

vs.

1. The Chief Commissioner of Income Tax
   International Taxation
   BMTC Building, BMTC Bhavan
   80 Feet Road, Koramangala
   Bangalore - 560 034.

2. The Commissioner of Income Tax
   International Taxation
   BSNL Building (Tower-1), 4th Floor
   No.16, Greams Road,
   Chennai-600 006.

3. The Income Tax Officer
   International Taxation 2(2)
   BSNL Building (Tower-1), 4th Floor
   No.16, Greams Road,
   Chennai-600 006.

4. Foreigners Regional Registration Office
   No.26, Shastri Bhavan, Annex Building
   Chennai-600 006. ...Respondents

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus, directing the first respondent to consider the representation preferred by the petitioner vide letter dated 26.07.2019 and consequently, direct the first respondent to issue a Tax Clearance Certificate.

* Prayer amended as per order dated 04.10.2019 in W.M.P.No.26550 of 2019 in W.P.No.24316 of 2019

For Petitioner : Mr.R.Sivaraman
For Respondents : Mrs.Hema Muralikrishnan
Senior standing counsel
for R1 to R3
Mr.V.Chandrasekaran
Central Government
Standing Counsel for R4

O R D E R

This writ petition was filed originally with a prayer for issuance of a writ of mandamus directing the first respondent to issue a "Tax Clearance Certificate" to the petitioner to travel abroad by using Passport No.A327080616 and further directing the fourth respondent herein to remove the seal dated 11.03.2019 affixed in the petitioner's passport No.A327080616 with respect to embargo of CWOP. However, the same has been subsequently, amended only with the relief of directing the first respondent to consider the representation preferred by the petitioner vide letter dated 26.07.2019 and consequently, directing the first respondent to issue a "Tax Clearance Certificate".

2. The case of the petitioner, in short, is as follows:

The petitioner is a Malaysian citizen and a Non-resident. He holds Overseas Citizen of India (OCI) status and his Malaysian Passport Number is A327080616. He is engaged in Logistics Business in Malaysia. The petitioner wanted to contribute to his place of origin and decided to start an Education Trust in Chennai, Tamil Nadu. His friends and relatives made a contribution towards the proposed Trust. Those contributions were deposited by the petitioner in his NRO Savings Bank Account in the Bank of Baroda, Vadapalani Branch. The third respondent initiated proceedings under Section 147 of the Income Tax Act, 1961 for the assessment years 2008-2009 to 2012-2013, since the petitioner had not filed his return of income for those assessment years. The assessment for the assessment year 2013-2014 was selected for scrutiny under "CASS" and subsequently, a notice under Section 143(2) was issued. During the assessment proceedings, the petitioner submitted credits to his Bank account with details. The third respondent completed the assessment vide orders dated 29.03.2016 and 28.12.2016 under Section 143(3) r/w 147 of the Income Tax Act, 1961, for the assessment years 2008-2009 to 2012-2013 and for the assessment year 2013-2014 vide Order dated 29.03.2016 under Section 143(3) of the Income Tax Act, 1961. The third respondent also issued a demand notice. Aggrieved against the order of the third respondent, the petitioner filed an application before the Commissioner of Income Tax (Appeals) for the assessment years 2008-2009 to 2013-2014. The Commissioner of Income Tax (Appeals) dismissed the appeals on various dates. Challenging those orders, the petitioner filed further appeal before the Income Tax Appellate Tribunal. The Tribunal, after considering the case, has set aside the assessment and remitted the matter for fresh consideration to the third respondent. Therefore, the petitioner has made a request for issuing "Tax Clearance Certificate". Since the said request has not been considered, the present writ petition is filed with the relief as stated supra.

3. The learned counsel for the petitioner reiterated the above contentions and submitted that the request of the petitioner seeking for issuance of "Tax Clearance Certificate" may be directed to be considered by the respondents.

4. The learned Senior Standing Counsel appearing for the Revenue submitted that merely because the Tribunal has set aside the order of assessment and remitted the matter back to the Assessing Officer, the petitioner is not entitled to get the said certificate, since the assessment proceedings are still going on. Therefore, she submitted that depending upon the outcome of the assessment proceedings, the petitioner's request will be considered and appropriate orders will be passed.

5. Upon considering the above stated facts and circumstances and in view of the admitted position that the assessment proceedings are going on in pursuant to the remand made by the Tribunal, this Court is not expressing any view on the merits of the claim made by the petitioner, as it is for the first respondent to consider and decide the same in the application dated 26.07.2019.

6. Accordingly, this Writ Petition is disposed of, only by directing the first respondent to consider the application dated 26.07.2019 and pass orders on the same on merits and in accordance with law, within a period of eight weeks from the date of receipt of a copy of this order. The petitioner is also directed to cooperate with the authority for completion of the assessment in pursuant to the remand made by the Tribunal. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(Insp cell)

//True Copy//

Sub Assistant Registrar

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To

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+1cc to M/s.R.Sivaraman, Advocate SR.87407
+1cc to M/s.V.Chandrasekaran, Advocate SR.86743
+1cc to M/s.Hema Muralikrishnan, Advocate SR.86423

W.P.No.24316 of 2019

CP(CO)
CB(15/11/2019)