IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.01.2019

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

W.P.No.28986 of 2018 and W.M.P.Nos.33882,
33887 & 33888 of 2018

T.S.Kumaraswamy .. Petitioner

-vs-

1. The Director General of Income Tax (Inv),
Tamil Nadu & Pondicherry, New No.46, Old No.108,
MG Road, Nungambakkam, Chennai-34.

2. The Principal Director of Income Tax (Inv),
Investigation Wing, New No.46, Old No.108
MG Road, Nungambakkam, Chennai-34.

3. The Additional Director of Income Tax Investigation,
Unit-3, New No.46, Old No.108
MG Road, Nungambakkam,
Chennai-34.

4. The Deputy Director of Income Tax Investigation,
Unit-3(2) New No.46, Old No.108
MG Road, Nungambakkam,
Chennai-34.

5. The Deputy Director of Income Tax Investigation,
Unit-4(3) New No.46, Old No.108
MG Road, Nungambakkam,
Chennai-34.

6. The Assistant Commissioner of Income Tax
Circle-I, No.138/3, LMR Shopping Arcade,
III Floor, Salem Road, Namakkal-637 001.

.. Respondents

Prayer:-

Writ Petition filed under Article 226 of the Constitution of India, praying for the issue of a Writ of Certiorarified Mandamus, calling for the records of the fifth respondent, contained in the Prohibitory Order dated 06.07.2018 and quash the same as illegal, arbitrary and contrary to law and consequently restrain the respondents, their subordinates, agents and employees from preventing the petitioner from using, operating or withdrawing sums from his bank accounts, receivables and all assets and properties of the petitioner.

For Petitioner :: Mr.A.R.L.Sundaresan, Senior Counsel for Mr.R.Parthasarathy

For Respondents :: Mr.A.P.Srinivas and Mr.A.N.R.Jaya Prathap, Standing Counsel

ORDER

The petitioner has come to this Court questioning the Prohibitory Order dated 06.07.2018 issued by the fifth respondent and seeking a direction restraining the respondents, their subordinates, agents and employees from preventing him from using, operating or withdrawing sums from his bank accounts, receivables and all assets and properties.

2.Mr.A.R.L.Sundaresan, learned senior counsel appearing for the petitioner pleaded that when the impugned prohibitory order passed under Section 132(3) of the Income Tax Act prohibiting not to remove, part with or otherwise deal with any document, money, bullion, jewellery or other valuable article or thing except with the previous permission of respondent officer, they have prevented the petitioner from using the bank account in question beyond the period of sixty days. Although the time period of sixty days under Section 132(8A) had already elapsed, the respondents are still illegally preventing the petitioner from using the bank accounts in question on the basis of the impugned prohibitory order which is blatantly illegal. He would further submit that when the prohibitory impugned order failed to specify that they shall operate only for a period of sixty days and also did not even specify all the bank accounts that are to be covered by the order, even after the expiry of the prohibitory order, the respondents have not intimated the banks, as a result, the petitioner was not able to operate the bank account. Therefore, the impugned prohibitory order passed under Section 132(1) had elapsed after a period of sixty days by virtue of Section 132(8A) and the petitioner can operate all the bank accounts. Hence, the impugned order is liable to be quashed.

3.A counter affidavit in W.P. No.31021 of 2018, which is connected to this writ petition, filed by the second respondent shows that the prohibitory order had lapsed due to the passage of time. It is relevant to extract para 27 as under:

... The petitioner's claim that the respondent officials controlled and operated the restrained bank accounts is far from truth. Once a bank account is restrained u/s.132(3), no one can operate it unless the restraint is revoked. In any case, the operation of restraint u/s.132(3) has since ceased after expiry of 60 days from the conclusion of the search. This contention therefore is infructuous. When the provisions of Section 132(3) which are in public domain and are very clear and unambiguous about the period of restraint and in the absence of any mandatory requirement of intimating the parties, it was not necessary to inform about the said fact. In any case, neither the petitioner nor the banks have sought any clarification or communication from the respondent Investigating Officer. From the above stated circumstances it is abundantly clear that the prohibitory order issued is not to harass the petitioner and in any case since 60 days have lapsed, the said grievance has no legs to stand on.

4.Since the respondents have also admitted in the counter affidavit that the operation of the prohibitory order passed under Section 132(3) had since ceased after expiry of sixty days from the date of the order and in view of the order dated 18.12.2018 passed in W.P. No.30692 of 2018 allowing the writ petition on the basis of the counter affidavit of the respondents, the writ petition deserves to be allowed. It is also pertinent to extract paras 7 and 8 of the said order as under:

'7.It is useful to extract paragraph 3 of the counter affidavit of the respondent hereunder:

“3.I submit that prohibitory order issued u/s.132(3) of the Income Tax Act is valid for a period of 60 days only and thereafter it automatically ceases its effect. In any case, the operation of restraint u/s.132(3) has since ceased after expiry of 60 days from the conclusion of the search. When the provisions of Section 132(3) are very clear and unambiguous about the period of restraint and in the absence of any mandatory requirement of intimating the parties, it was not necessary to inform about the said fact.”

8.In the light of the stand taken by the respondent that the prohibitory order passed under Section 132(3) of the Income Tax Act on 05.07.2018 has lapsed after the expiry of 60 days, the writ petition stands allowed. No costs.'

5.In the light of the above order, as I mentioned above, since the prohibitory order passed under Section 132(3) of the Income Tax Act on 06.07.2018 already ceased to exist, the writ petition stands allowed and the petitioner is entitled to operate his bank accounts. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

vga

To

1. The Director General of Income Tax (Inv)
Tamil Nadu & Pondicherry
New No.46, Old No.108
MG Road, Nungambakkam,
Chennai-34.

2. The Principal Director of Income Tax (Inv),
Investigation Wing,
New No.46, Old No.108
MG Road, Nungambakkam,
Chennai-34.

3. The Additional Director of Income Tax Investigation,
Unit-3, New No.46, Old No.108
MG Road, Nungambakkam,
Chennai-34.

4. The Deputy Director of Income Tax Investigation,
Unit-3(2) New No.46, Old No.108
MG Road, Nungambakkam,
Chennai-34.

5. The Deputy Director of Income Tax Investigation,
Unit-4(3) New No.46, Old No.108
MG Road, Nungambakkam,
Chennai-34.

6. The Assistant Commissioner of Income Tax
Circle-I, No.138/3, LMR Shopping Arcade,
III Floor, Salem Road, Namakkal-637 001.

+1cc to Mr.A.P.Srinivas, Advocate, S.R.No.4980
+2cc to Mr.R.Parthasarathy, Advocate, S.R.No.5019

W.P.No.28986 of 2018 and W.M.P.Nos.33882, 33887 & 33888 of 2018

GP(CO)
CS/29/01/2019