IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 26.02.2020

CORAM

THE HONOURABLE DR. JUSTICE ANITA SUMANTH

W.P. No.4810 & 4812 of 2020
and
WMP. Nos.5694, 5695, 5696, 5697 & 5698 of 2020

Smt. P. Kanimozhi ...Petitioner in both WPs

Vs

1. Assistant Commissioner of Income Tax,
Circle -2, Erode - 638 001.

2.Commissioner of Income Tax (Appeals -3),
No.63 A Race Course Road,
Coimbatore 641 018.

3.Federal Bank Ltd.
Sathyamangalam Branch,
No.347, Gobi Main road,
Sathyamangalam, Erode - 638 401
Represented by its Branch Manager

3.Bank of Baroda
Sathyamangalam Branch,
No.359, Bazaar Street,
Sathyamangalam, Erode - 638 401
Represented by its Branch Manager ...Respondents in both WPs

Common Prayer: PETITION filed under Article 226 of The Constitution of India praying for the issuance of Writ of Certiorarified Mandamus, calling for the records relating to the Notice issued by the 1st respondent in DIN & Notice No.ITBA/RCV/S/226(3)-1/2019-20/1025339680(1) and 1025339666 (1) dated 18.02.2020 to the 4th Respondent and 3rd respondent attaching the Petitioner's Bank accounts and quash the same.

For Petitioner in both WPs.: Mr. Niranjan Rajagopalan

For Respondents in both WPs: Mr.A.P.Srinivas,
Senior Standing Counsel

C O M M O N   O R D E R

Mr.A.P.Srinivas, learned Senior Standing Counsel accepts notice for the respondents.

2. By consent expressed by both learned counsel, these writ petitions are disposed finally even at the stage of admission itself.

3. The petitioner has challenged attachments of the bank accounts in two banks, i.e., Bank of Baroda and Federal Bank, both Sathyamangalam Branch pursuant to orders of assessment passed in terms of the Income Tax Act, 1961 (Act). The petitioner has suffered orders of assessment for the periods 2014-15, 2016-17 and 2017-18 that are admittedly pending in appeal before the Commissioner of Income Tax (Appeals)-3, Coimbatore [CIT (A)]. Pending appeals, applications for interim stay were filed, both before the Assessing Officer (AO) as well as the CIT (A). The appeals are stated to be in the process of being heard. Remand reports have been sought for from the AO and the proceedings are on-going. The CIT (A), arrayed as R2 issued a hearing notice dated 27.01.2020, where he fixed the appeal for one AY on 05.02.2020. This hearing did not transpire, for the reason, according to the petitioner, that only a partial remand report had been filed and the Revenue had sought time for filing a more complete report. In the notice dated 27.01.2020, the CIT (A) states:-

> 'Note to the Assessee: Your petition u/s.220(6) has been received in this office on 24.01.2020. The same will also be heard on the date and time stated in this notice above.'

4. Thus the AO is well aware of the pendency of the stay applications before the appellate authority. Both appeals and stay applications were adjourned and no notice of hearing has been received thereafter. While this is so, on 18.02.2020, the Bank accounts of the petitioner in the aforesaid two banks have been attached, impugned before me. I am of the view the action is premature and ought not to have been resorted to, for the reason that the appellate authority had specifically listed one of the appeals as well as stay petitions filed by the petitioner on 27.01.2020. The hearing was adjourned to await particulars/remand report from the Department. It is not the case of the revenue that the assessee has not been co-operating in appeal or has been protracting the appellate proceedings.

5. As far as the demand is itself concerned, the petitioner states that 20% of the demand has been paid in respect of AY 2014-15 and 10% of the demand in respect of AY 2016-17. No portion of the demand has been remitted in respect of AY 2017-18.

6. In the light of the aforesaid, it was incumbent upon the official respondents to have considered the stay applications as expeditiously as possible particularly in the light of Instruction No.1914 F. No. 404/72/93 ITCC dated 02.12.1993 requiring the appellate authority to dispose applications for stay within two weeks from receipt thereof from the assessee.

7. For the above reasons, the impugned notices are set aside and the attachment upon the Bank accounts will be lifted forthwith. The CIT (A) will dispose the pending stay applications within a period of six(6) weeks from today. Let no recovery be initiated in the meantime.

8. The Writ Petitions are disposed in the above terms. No costs. Connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

rkp

To

1.Assistant Commissioner of Income Tax
Circle 2, Erode-638 001.

2.The Commissioner of Income Tax,
(Appeals 3) No.63, A Race Course Road,
Coimbatore-641 018.

+2cc to M/s.G.R.Associations, Advocate SR.16556,16557
+1cc to Mr.A.P.Srinivas, Advocate SR.16810

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KJ(CO)
CB(05/03/2020)