

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 28.02.2020

CORAM

THE HONOURABLE DR. JUSTICE ANITA SUMANTH

W.P. No.5174 of 2020
and
WMP. Nos.6111 & 6112 of 2020

Ekambaram Manonmani

...Petitioner

Vs

- 1.The Commissioner of Income Tax,
Salem, No:3, Gandhi Road,
Salem, 636 007.
- 2.The Income Tax Officer,
Ward 1 (6), Salem,
No:3, Gandhi Road,
Salem, 636 007.
- 3.The Branch Manger,
Axis Bank,
No:910, Niresesh Complex,
Cuddalore Main Road,
Attur, 636 102.
- 4.The Branch Manager,
Bank of Baroda,
No:1250, Salem Cuddalore Main road,
Attur, 636 102.

सत्यमेव जयते

...Respondents

Prayer : PETITION filed under Article 226 of The Constitution of India praying for the issuance of Writ of Certiorarified Mandamus to call for the records of the 2nd respondent in PAN No.ADGP2859J and quash the notices under section 226 (3) of the Act dated 21.02.2020 in DIN & Letter No:ITBA/COM/F/17/2019-20/1025552637(1) issued to the 3rd respondent and ITBA/COM/F/17/2019-20/1025552953(1) issued to the 4th respondent and consequently direct the 1st respondent to dispose off the appeal and the stay petition pending on the file of the 1st respondent.

For Petitioner : Mrs. G.Asokapathy
for Pass Associates

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

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 and since the matter involves a short point, this Writ Petition is disposed finally even at the stage of admission.

3. The petitioner has suffered an order of assessment dated 30.12.2019 for Assessment Year 2019-20 passed in terms of the provisions of the Income Tax Act, 1961 (in short 'Act'). A statutory appeal has been filed, pending before the Commissioner of Income Tax (Appeals)/R1. On 04.02.2020, the petitioner has also filed a stay application before R1 which is also stated to be pending as on date. Even during the pendency of the aforesaid stay application, the impugned communication has been issued by the Assessing Officer/R2 treating the petitioner as assessee in default and calling upon the petitioner to remit the disputed taxes forthwith under threat of coercive action.

4. I am of the view that such recovery proceeding are premature, since the petitioner has admittedly filed an application seeking stay before the Appellate Commissioner and the Central Board of Direct Taxes (CBDT) has, in Instruction No. 1914 F. No. 404/72/93 ITCC dated 02.12.1993 directed the Appellate Commissioner to dispose the applications for stay filed by an assessee within a period of two weeks from date of filing of the same.

5. In view of the aforesaid, the impugned communication dated 21.02.2020 is set aside. The petitioner is permitted to appear before the Commissioner of Income Tax (Appeals)/R2 on Tuesday, the 09th March of 2020 at 10.30 a.m. without expecting any further notice in this regard. After hearing the petitioner and considering the stay application, an order shall be passed by R2, taking into consideration the three fold aspects of prima facie case, financial stringency and balance of convenience. This exercise shall be completed within a period of four (4)

weeks from 09.03.2020, i.e., on or before 07.04.2020. Let no coercive measures for recovery be insisted upon till 07.04.2020. In the event the petitioner does not appear on the aforesaid date of hearing, the impugned order will stand revived.

6. This Writ Petition is disposed in the aforesaid terms. No costs. Connected Miscellaneous Petitions are also closed.

s/d-
Assistant Registrar (CS VIII)

True Copy

Sub-Assistant Registrar

rkp

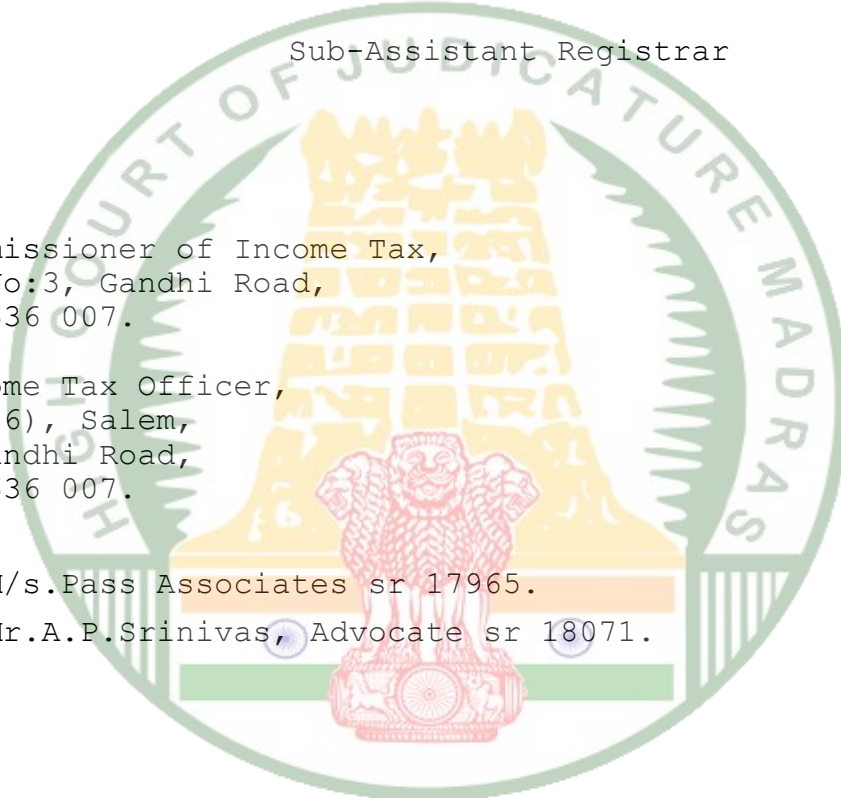
To

1. The Commissioner of Income Tax,
Salem, No:3, Gandhi Road,
Salem, 636 007.

2. The Income Tax Officer,
Ward 1 (6), Salem,
No:3, Gandhi Road,
Salem, 636 007.

+1 CC to M/s. Pass Associates sr 17965.

+1 CC to Mr. A.P. Srinivas, Advocate sr 18071.



सत्यमेव जयते

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and
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VSNIIC (CO)
SP (03/03/2020)

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