

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.12.2020

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THE HONOURABLE DR. JUSTICE ANITA SUMANTH

W.P. No.17382 of 2020
and WMP. Nos.21555, 21552, 21546, 21547,
21549, 21553 & 21554 of 2020

Jeppiaar Fishing Harbour Muttom P. Ltd.
Represented by its General Manager Mr. R. Karthik
12 Ganapathy Colony / No. 29 Ganapathi Street
Royapettah Chennai 14.

... Petitioner

VS

- 1 The Deputy Commissioner of Income Tax
Central Circle (3) 3rd Floor
New Income Tax Building
No. 46 (Old No. 108) Mahatma Gandhi Road Chennai 600 034.
- 2 The Commissioner of Income Tax (Appeals)
18 3rd Floor Income Tax Investigation Building
Nungambakkam Chennai -34
- 3 The Principal Commissioner of Income Tax
Central 1 Chennai
Nungambakkam Chennai 34
- 4 M/s. Indian Bank
Muttom Harbour Branch Represented by its Branch Manger
Harbour Complex Muttom Kalkulam Taluk
Kanyakumari District 629 202
- 5 M/s. Indian Bank
Sholinganallur Branch (Sathyabama University Branch)
Represented by its Branch Manager
Jeppiaar Nagar No.238 Old Mahabalipuram
Sholinganallur Chennai
- 6 M/s. Indian Bank
Muttom Mandapam Branch Represented by its Branch Manger
Jey pee Yaar Kalyanamandapam
St. Johns Primary school Road Muttom
Kanyakumari Tirunelveli 62

7 M/s. Tamilnadu Mercantile Bank
Rajakkamangalam Branch Main Account
Represneted by its Branch Manager 4 - 34G
Nagercoil Colachal Road Rajakkamangalam 629 502.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certioarified Mandamus, to call for the records on the file of the 1st Respondent in PAN AABCJ9451G in passed the impugned order in ITBA / ASK / F / 73 / 2020-21 / 1028414819(1) dated 28.10.2020 and quash the same as arbitrary without jurisdiction and in violation of the principles of equity and justice and consequently direct the 1st Respondent and or 3rd Respondent to grant stay of recovery proceedings for the Assessment year 2017-18 pending disposal of the appeals before the 2nd Respondent.

For Petitioner : Mr.A.L.Somayaji, Senior Counsel
for Mr.R.Sivaraman

For Respondents : Mr.A.P.Srinivas, (for R1 to R3)
Senior Standing Counsel

O R D E R

Heard Mr.AL.Somayaji, learned Senior Counsel appearing for Mr.R.Sivaraman, learned counsel for the petitioner and Mr.A.P.Srinivas, learned Senior Standing Counsel for the respondents.

2. The petitioner challenges an order passed by the Principal Commissioner of Income Tax dated 28.10.2020 on an application filed by it seeking lifting of attachment of the bank accounts by way of coercive recovery proceedings in regard to demands arising from an order of assessment for assessment year 2017-18.

3. Admittedly, the petitioner has earlier approached the Commissioner of Income Tax (Appeals) (in short 'CIT(A)')/R2, on 10.02.2020, simultaneous with filing of the statutory first appeal with an application for stay of disputed demand. An opportunity of personal hearing prior to disposal of the stay application has been specifically sought.

4. Though Instruction No.1914 dated 21.03.1996 directs the authorities to dispose applications for stay within a period of two (2) weeks from date of receipt of the same and this direction has also been reiterated subsequently by subsequent instructions, this application is pending till date. It is also seen that the CIT(A) while hearing the appeal has admitted the petitioner's application under Rule 46A of the Income Tax Rules, 1962 for filing of additional evidence and has sought a remand report from

the Assessing Officer in regard to the additional evidence filed. Insofar as the CIT(A) is seized of the appeal and the hearing of the appeal is on-going, it would be appropriate for him to consider the pending stay application. A direction is thus issued to the CIT (A) to hear the petitioner on the stay application dated 10.02.2020 and dispose the same.

5. On instructions, Mr.Srinivas would state that 15.12.2020 may be fixed as the date of hearing. The petitioner will appear before R2 on 15.12.2020 at 11.00 a.m. without expecting any further notice in this regard and make submissions on the stay application. After hearing the petitioner, orders shall be passed on the stay application including on the aspect of lifting of bank attachments on or before 29.12.2020. It is needless to say that the CIT (A) while disposing the stay application shall take into account the tri-fold aspects of prima facie case, financial stringency and balance of convenience and pass a speaking order uninfluenced by the order passed by the Principal Commissioner of Income Tax dated 23.10.2020, impugned in this Writ Petition.

6. Both learned Senior Counsel as well as the learned revenue counsel would concur on the position that the aforesaid directions would suffice to balance the interests of both parties. This Writ Petition is thus disposed as above. No costs. Connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

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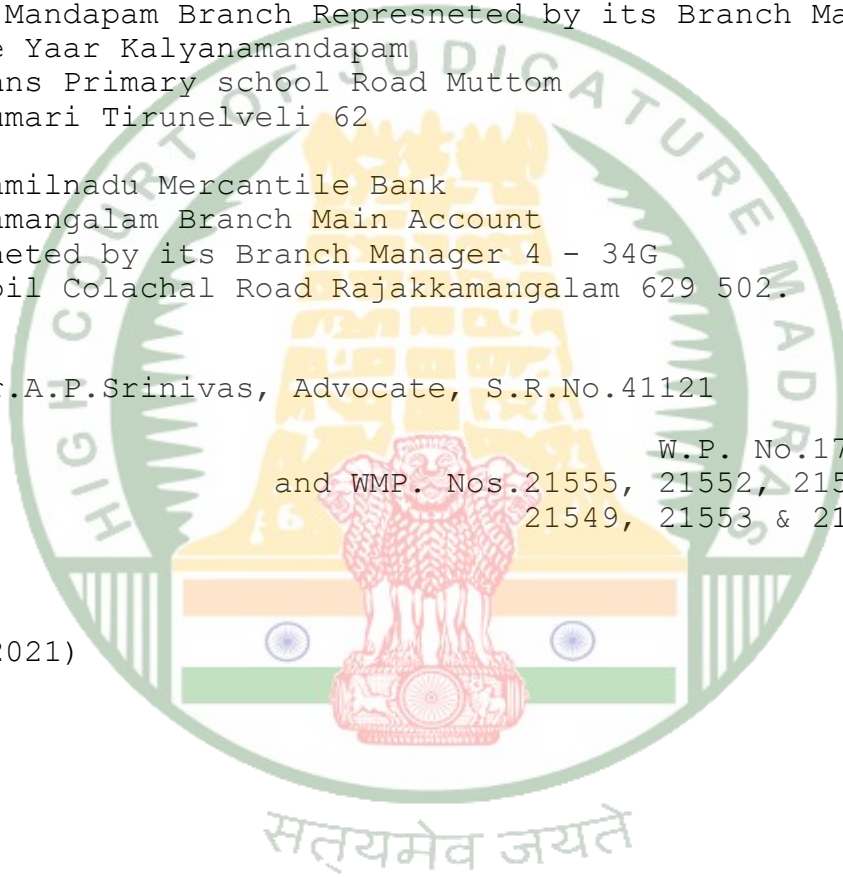
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Nagercoil Colachal Road Rajakkamangalam 629 502.

+lcc to Mr.A.P.Srinivas, Advocate, S.R.No.41121

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rv (29/01/2021)



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