IN HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.02.2020

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.NO.740 OF 2016
AND
W.M.P.NO.556 OF 2016

Mr. Alagesan
Proprietor: Manikannan Rice Mill,
Palvarthuvendan Village,
Polur Taluk, Tiruvannamalai District. ...Petitioner

Vs.

1. The Chief Commissioner of Income Tax -III,
   Now re-designated as Principal chief
   Commissioner of Income Tax, Chennai -4,
   Income Tax Department, 121,
   Nungambakkam High Road,
   Chennai – 600 034.

2. The principal Commissioner of Income Tax – 8,
   Income Tax Department, 121,
   Nungambakkam High Road,
   Chennai – 600 034.

3. The Tax Recovery Officer – 8,
   Income Tax Department,
   No.611, 4th Floor, Kannammai Building,
   Anna Salai, Chennai – 600 006.

4. The Income Tax Officer Ward – I (4),
   Income Tax Department,
   No.2, Barracks Cross Street,
   Officers Line, Vellore – 632 001.

...Respondents

Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records of the 3rd respondent to quash the impugned notice in Form No.ITCP 25 dated 15.12.2015 in AGIPA7315G/TRC.3/2010-11 relating to the Assessment Year 2003-04 and direct the 3rd respondent not to proceed further in the matter of recovery of the tax and interest charged under Sections 234A, 234B, 234C, 220(2) and Rule 5 of the Second Schedule to the Income Tax Act, 1961 pending disposal of the waiver petition before the 1st respondent.

For Petitioner : Mr.A.S.Sriraman

For Respondents: Mr.Prabhu Mukunth,
Arun Kumar,
Junior Standing Counsel for
M/s.Hema Muralikrishnan
Standing Counsel.

O R D E R

In this Writ Petition, the petitioner has challenged the impugned notice dated 15.12.2015 in Form No.I.TC.P.25 in bearing reference No.AGIPA7315G/TRC.3/2010-11 issued by the 3rd respondent.

2. The petitioner claims to be a small agricultural business deriving income from Rice Mills and had filed income tax return on 27.08.2004 for the Assessment Year 2003-04. Since the petitioner failed to respond to the notice issued under Section 143(2) of the Income Tax Act, 1961 and to the notice issued under Section 144 of the Income Tax Act, 1961, the assessment order dated 17.02.2006 was passed based on the best judgment method by adding the opening capital of Rs.32,42,854/- to the taxable income of the petitioner and accordingly, the tax due was determined and surcharge and interest thereon amounting to Rs.16,89,076/- were added.

3. The petitioner thereafter filed an appeal before the Commissioner of Income Tax (Appeals) - IX in ITA No.468/05-06. By an order dated 13.12.2007, the Commissioner of Income Tax (Appeals) - IX allowed the appeal.

4. Therefore, the 4th respondent filed an appeal before the Income Tax Appellate Tribunal in ITA No.338/Mds/2008. By an order 23.10.2008, the Income Tax Appellate Tribunal has reversed the order of the Commissioner of Income Tax (Appeals) - IX allowing the petitioner's appeal, as there was no representation on behalf of the petitioner. The said order was passed by the Income Tax Appellate Tribunal by placing reliance on the decision of the Hon'ble Supreme Court in Kale Khan Mohammad Hanif Vs. Commissioner of Income Tax, (1963) 50 ITR 1.

5. The petitioner thereafter filed a Miscellaneous Petition in M.P.No.153/Mds/2010 on 14.08.2010, to recall the said order, so that the petitioner could make submission on merits. By an

order dated 11.02.2012, the said Miscellaneous Petition was dismissed by the Income Tax Appellate Tribunal, Chennai 'C' Bench. The petitioner thereafter filed T.C.A.No.259 of 2011 before this Court, which was dismissed vide order dated 09.11.2011.

6. The petitioner thereafter also unsuccessfully challenged the order dated 09.11.2011 passed by this Court in T.C.A.No.259 of 2011 before the Hon'ble Supreme Court in S.L.P.(Civil). No.35742 of 2012.

7. The petitioner thereafter filed yet another T.C.A.No.162 of 2012, against the final order dated 23.10.2008 of the Income Tax Appellate Tribunal passed in ITA No.338/MDS/2008 with a delay of 810 days.

8. The Division Bench of this Court however dismissed the said appeal on 09.07.2012, on the ground that this Court had already considered the issue on merits in T.C.A.No.259 of 2011 and therefore, subsequent appeal, i.e., T.C.A.No.162 of 2012 was not maintainable.

9. Thus, the income tax amount of Rs.10,60,795/- and the surcharge of Rs.53,040/- stood confirmed. Therefore, the petitioner was liable to pay interest under Sections 234A, 234B and 230C which was calculated as Rs.5,75,831/- when the assessment order dated 17.02.2006 was passed.

10. In the light of the above, the petitioner filed a petition for waiver of interest and surcharge under the aforesaid provisions in terms of Section 220(2) of the Income Tax Act, 1961 read with Rule 5 to the II Schedule of the Income Tax Act, 1961 before the 1st respondent Chief Commissioner of Income Tax - III, which was also passed exparte on 23.10.2008.

11. Thereafter, on 15.12.2015, a summons was issued to the petitioner. It called upon the petitioner to appear in connection with the arrears of tax recovery proceedings. Another notice under Section 221(1) of the Income Tax Act, 1961 was issued. In the same notice, the petitioner was informed that the petitioner was arrears of tax of Rs.24,43,578/-. On the same day, i.e. 15.12.2015, by an another notice, the petitioner was called upon to appear before the tax recovery officer to show cause as to why the petitioner should not be committed to the civil prison in execution of the recovery certificate.

12. The petitioner has challenged these proceedings proposing the recovery of arrears of tax and the notice seeking to arrest the petitioner to the civil prison in execution of the recovery certificate of arrears dated 03.02.2011 bearing

reference Certificate No.03/2010-11 pending disposal of Section 220(2) petition filed for waiver of interest.

13. I have considered the arguments advanced by the learned counsel for the petitioner and the respondents.

14. It is noticed that the petitioner has filed an application for waiver of interest before the 1st respondent Chief Commissioner of Income Tax - III. No order had been passed by the 1st respondent Chief Commissioner of Income Tax - III in the said application when the impugned notice was issued.

15. It appears that subsequently, an order has been passed by the 1st respondent Chief Commissioner of Income Tax - III on 08.11.2019. The the 1st respondent Chief Commissioner of Income Tax - III has rejected the application filed for waiver of interest by the petitioner under Section 220(2) of the Income Tax Act, 1961 read with Rule 5 to the II Schedule of the Income Tax Act, 1961. The petitioner seeks to challenge the same in accordance with law.

16. That being the case, the impugned recovery proceedings proposing to arrest the petitioner, shall be kept in abeyance provided the petitioner initiate appropriate proceedings, within a period of thirty days from the date of receipt of a copy of this order against the order dated 08.11.2019 passed by the 1st respondent Chief Commissioner of Income Tax - III.

17. The petitioner is therefore given an interim protection for the period of three months from the date of receipt of a copy of this order and thereafter, it is for the petitioner to approach the appropriate forum/Court against the proceedings of the order dated 08.11.2019 passed by the 1st respondent Chief Commissioner of Income Tax - III and for extension of the interim relief granted herein.

18. The present Writ Petition stands disposed with the above observations. No cost. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

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To

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+1cc to Mr.S.Sridhar, Advocate, S.R.No.9820
+1cc to M/s.Hema Muralikrishnan, Advocate, S.R.No.10177

W.P.No.740 of 2016
and
W.M.P.No.556 of 2016

RLD(CO)
CS/20/07/2020