BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: **08.12.2020**
CORAM:
THE HONOURABLE MR.JUSTICE **ABDUL QUDDHOSE**
W.P.(MD)No.3372 of 2020
and
W.M.P.(MD).No.2836 of 2020

N.Karuppusamy ... Petitioner

Vs

1.The Income Tax Officer,
Ward I, Karur,
No.16A, Chinandan Koil Road,
Karur-639 001.

2.The Commissioner of Income Tax (Appeals)-I, Trichy,
O/o. The Commissioner of Income Tax (Appeals)-I, Trichy,
No.44, Williams Road, Cantonment,
Tiruchirapalli-620 001.

3.The Tax Recovery Officer,
TRO-I, Trichy,
Income Tax Office Annexe Building,
No.44, Williams Road, Cantonment,
Tiruchirapalli-626001. ... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, to call for the records pertaining to demand notice dated 29.12.2015 having reference No.7/2015-16/BEDOJOO30G and all consequential orders of attachment of immovable property dated 10.12.2019, 17.12.2019, 04.02.2020 and notice under Section 226 (3) dated 13.02.2020 issued by the third respondent and quash the same as non-est and illegal and further direct the second respondent to dispose of the appeal, which is filed by the petitioner, within a time frame fixed by this Court.

For Petitioner : Mr.Ravi Kannan

For Respondents : Mr.N.Dilip Kumar
Senior Standing Counsel

ORDER
(This Petition was heard through the Video Conferencing)

This Writ Petition has been filed challenging the demand notice dated 29.12.2015 and the consequential orders of attachment of immovable property dated 10.12.2019, 17.12.2019, 04.02.2020 and notice under Section 226 (3) of the Income Tax Act, 1961, dated 13.02.2020 issued by the third respondent

2. Heard Mr.Ravi Kannan, learned counsel for the petitioner and Mr.N.Dilip Kumar, learned Senior Standing Counsel for the respondents.

3. Aggrieved by the order of the second respondent, dated 20.07.2018, the petitioner preferred a statutory appeal under Section 245 of the Income Tax Act, 1961, before the Income Tax Appellate Tribunal, 'D" Bench, Chennai. By an order, dated 02.07.2019, the Income Tax Appellate Tribunal, after quashing the order of the second respondent remanded the matter back to the second respondent for fresh consideration in accordance with law.

4. It is the contention of the petitioner that he had earlier challenged the assessment order passed by the first respondent before this Court by filing W.P.(MD).No.15881 of 2015 on the ground of violation of principles of natural justice. It is further submitted by the petitioner that by an order, dated 05.03.2019, passed in W.P.(MD).No.15881 of 2015, this Court disposed of the Writ Petition as infructuous, after recording the submissions of learned counsel for the petitioner, but, however, granted stay of recovery of the demand made by the respondents only for a limited period of two weeks from 05.03.2019. When the order dated 05.03.2019 was passed by this Court in W.P.(MD).No.15881 of 2015, the petitioner had preferred the statutory appeal before the Income Tax Appellate Tribunal, 'D' Chennai. Thereafter, by an order, dated 02.07.2019, the Income Tax Appellate Tribunal quashed the order of the second respondent and remanded the matter back to the second respondent for fresh consideration in accordance with law.

5. It is the contention of the petitioner that when the statutory appeal is pending before the second respondent, the respondents cannot demand the tax amount when it is under challenge before the second respondent. It is also the case of the petitioner that no further steps can be taken by the respondents for the sale of immovable property, which has already been attached. In such circumstances, this Writ Petition has been filed.

6. Admittedly, the petitioner had the benefit of stay while in the earlier round of litigation with the second respondent when the statutory appeal filed by him was pending before him. Thereafter, the statutory appeal was dismissed by the second respondent and aggrieved by the same, the petitioner has also preferred a statutory second appeal before the Income Tax Appellate Tribunal, Chennai. The Income Tax Appellate Tribunal has quashed the order of the second respondent and remanded the matter back to the second respondent for fresh consideration on merits and in accordance with law. While that be so, when the petitioner had the benefit of interim stay while statutory appeal filed by him earlier under Section 245 of the Income Tax Act, 1961, was pending with the second respondent, the petitioner should also be entitled for a similar stay, when the matter has been remanded back to the second respondent pursuant to the order passed by the Income Tax Appellate Tribunal, Chennai. It has to be restricted only till the disposal of the statutory appeal by the second respondent within a time frame to be fixed by this Court.

7. In fact, in this Writ Petition, even though the petitioner has challenged the order of attachment and the consequential demand notice issued by the third respondent, the main relief that the petitioner seeks is for the disposal of the statutory appeal filed by him with the second respondent within a time frame to be fixed by this Court. After giving due consideration to the aforementioned factors, this Court directs the second respondent to dispose of the statutory appeal pursuant to the order dated 02.07.2019 passed by the Income Tax Appellate Tribunal, 'D' Branch, Chennai, within a period of four weeks from the date of receipt of a copy of this order. Till such time, there shall be an order of interim stay of the demand of recovery, however, the attachment effected over the petitioner's property shall continue.

8. The Writ Petition stands disposed of, accordingly. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

Tsg

Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the Advocate/litigant concerned.

To

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+1 CC to Mr.N.DILIP KUMAR, Advocate (SR-24749[F] dated 09/12/2020)

W.P.(MD)No.3372 of 2020
08.12.2020

VB (18.12.2020) 4P 5C