



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 05.03.2020

CORAM:

THE HONOURABLE MR.JUSTICE **S.S.SUNDAR**

AND

THE HONOURABLE MR.JUSTICE **C.SARAVANAN**

W.A. (MD) No.367 of 2020

and

CMP (MD) No.2578 of 2020

M/s Dhanalakshmi Srinivasan Chit Funds P Ltd.,
274 - C Thuraiyur Road,
Perambalur 621212.
PAN AADCD 0651N

: Appellant/Petitioner

Vs.

1.The Principal Commissioner of Income Tax,
Central Circle - 2,
Income Tax Department,
New No.46 Old No.108 Mahatma Gandhi Road,
Chennai - 600 034.

2.The Commissioner of Income Tax (Appeals),
Chennai - 19,
Income Tax Department,
New No.46 Old No.108 Mahatma Gandhi Road,
Chennai - 600 034.

3.The Joint Commissioner of Income Tax,
Central Range,
Income Tax Department,
44, Williams Road,
Cantonment,
Tiruchirapalli - 620 001.

4.The Assistant Commissioner of Income Tax,
Central Circle - 1, Trichy,
Income Tax Department,
44, Williams Road,
Cantonment,
Tiruchirapalli - 620 001.

: Respondents/Respondents

<https://hcservices.ecourts.gov.in/hcservices/>
PRAYER: Writ Appeal is filed under Clause 15 of Letters Patent to
set aside the order dated 21.02.2020 passed in W.P.(MD) No.3544 of
2020.



Prayer in WP(MD). 3544/ 2020 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court call for the records of the 4th respondent to quash the impugned order bearing DIN and Letter No.ITBA/COM/F/17/2019-20/1024013247(1) dated 20.1.2020 and not to proceed further in the matter of recovery of the disputed arrears pending disposal of the First Appeal before the 2nd respondent pertaining to the assessment years 2012-13, 2013-14, 2015-16, 2017-18.

For Appellant : Mr.B.Kumar
Senior Counsel for
Mr.P.Subbaraj

For Respondents : Mr.N.Dlipkumar
Senior Panel Standing Counsel

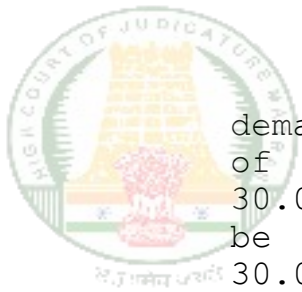
JUDGMENT

(Judgment of the Court was delivered by **S.S.SUNDAR, J.**)

This appeal is directed against the order of the learned Single Judge dated 21.02.2020 and the modified order dated 27.02.2020 in W.P(MD)No.3544 of 2020 and W.M.P(MD)Nos.2997 and 2998 of 2020.

2.The appellant has suffered assessment order for the assessment years 2012-13, 2013-14, 2015-16, 2016-17 and 2017-18 aggregating to a sum of Rs.54,08,05,243/-. It is not in dispute that the petitioner has filed an appeal before the Commissioner of Income Tax (Appeals) on 25.01.2020. Even before filing an appeal, it is stated that the appellant had approached the Assessing Officer, namely Assistant Commissioner of Income Tax and submitted a representation on 06.01.2020 to stay of the operation of the assessment orders dated 25.12.2019. The respondent by a communication dated 20.01.2020 informed that the stay petition can be considered only on payment of minimum of 20% of total demand when the demand is contested before the Commissioner of Income Tax (Appeals). Therefore, by an order of the respondent, the appellant was required to pay 20% of the total demand raised immediately in terms of CBDT's instruction. This order was challenged by the appellant in W.P(MD)No.3544 of 2020. The appellant instead of arguing the writ petition on merits seems to be agreed to pay 20% of the demand on instalments. The same was also agreed by the learned counsel for the department. In the said circumstances, the learned Judge passed the following order on 21.02.2020.:-

<https://hcservices.ecourts.gov.in/hcservices/> "4.Upon instructions, the learned Standing Counsel appearing for revenue, stated that the petitioners are permitted to pay 20% of the total



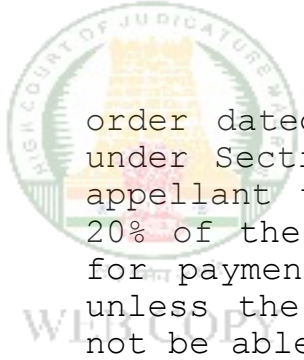
demand in five (05) equal monthly installments, first of such installment would commence on or before 30.03.2020. The corresponding installments will have to be paid on 30.04.2020, 30.05.2020, 30.06.2020 and 30.07.2020. The payment of the balance 80% of the amount is stayed on payment of the above, such installments for the 20% of the demand amount. In the meanwhile, the second respondent is directed to hear the appeal in expedition."

3.However, prior to the order of this Court granting time to pay 20% of the amount in five installments, an order of attachment was passed by the respondent Assessment Officer in terms of Section 226(3) of the Income Tax Act, 1961. It is stated that by virtue of the attachment order dated 07.02.2020, the petitioner could not operate the banks accounts. It enjoins the banks to pay 20% of the amount of Rs.54,08,05,240/- directly to the respondent. It is stated that the account has been frozen and the account has become inoperable. The appellant, therefore, brought it to the notice of the learned Judge, who passed the order dated 21.02.2020 in the above writ petition. Order dated 21.02.2020 was modified by another order dated 27.02.2020. Net result appears to be in conclusive for the appellant. The amended order inserts the following to the order:-

"On such payment of 20% of the total demand, the fourth respondent is directed to lift the attachments on the bank accounts as per the order/Notice under Section 226(3) of the Act bearing DIN and Letter No. ITBA/COM/F/17/2019-20/1024841870(1) dated 7.2.2020."

4.It is contended by the appellant that on account of the Notice issued under Section 226(3) of the Income Tax Act, 1961, by the respondent, namely, Assistant Commissioner of Income Tax, entire business of the appellant has come to a standstill and therefore, the petitioner is unable to mobilize any fund even to satisfy the condition imposed by this Court for granting stay of the order.

5.It is contended by the learned Senior counsel appearing for the appellant that the appellant is unable to pay salary to its employees. Apart from that, it is also submitted that the appellant is running Chit company and has about 50,000 subscribers and that monthly turnover is around Rs.50 crores and any direction to pay the amounts as per the order will have a deleterious on its business. It is submitted that in view of the order passed under Section 226 (3) of the Act, the appellant is unable to operate any of its accounts and receive any money from any of the subscribers of Chit funds promoted by the appellant. Apart from that, the learned Senior counsel submits that the attachment order has the propensity to damage the goodwill of the appellant in the market if it is allowed to continue. The apprehension of the appellant is that the present state will lead to total collapse of its business at any moment. In these circumstances, the learned Senior Counsel requested that the



order dated 07.02.2020 passed by the respondent Assessment Officer under Section 226(3) of the Act be stayed, at least, to enable the appellant to comply with the direction of this Court i.e., to pay 20% of the demand in five installments. It is stated that the time for payment of the first installment would expire 30.03.2020 and unless the said order of attachment is lifted, the appellant will not be able to carry on its business.

6.The learned counsel appearing for the respondents, however, submitted that the respondents have realized only one lakh though more than 40 accounts of the appellant were frozen pursuant to the order of attachment showing the attempt of the appellant to empty the accounts.

7.The learned counsel for the respondents submit that the order passed on 21.02.2020 was modified by the learned Single Judge after taking into consideration of conduct of the appellant. It is under these circumstances that the 4th respondent was directed to lift the attachment of the bank accounts subject to the appellant paying 20% of the total tax due, vide the assessment orders. He further submits that the fact that despite the order dated 07.02.2020, the Revenue could recover only a fraction of the amounts which is lesser than Rs.1,00,000/- which shows that the intention of the appellant is to take away the amounts so as to defeat the interest of the revenue.

7(a) The learned counsel for the respondents further submits that unless the appellant deposits 20% of the amount as ordered by the learned Single Judge, the order issued under Section 226(3) of the Income Tax Act, 1961 should not be disturbed.

8.This Court considering the overall situation is of the view that the mutual trust and cooperation is required at this moment so as to protect the interest of the public.

8(a). Though there is no embargo under the notice communicated under Section 226(3) of the Income Tax, 1961 on the appellant from operating its accounts, it appears that the order giving the benefit to the appellant has become inoperable. To insist on the petitioner, the first pay 20% of the disputed tax in five installments ending with 30.07.2020 and thereafter, the lift the order of attachment would result in denial of the benefit originally conferred on 21.01.2020 on the appellant.

8(b).Under these circumstances, we are inclined to modify the order by lifting the order of attachment subject to the appellant paying amount in installments. The concession being given by this order will stand automatically withdrawn *sine die* if the appellants fails to pay the amounts as per the date fixed by the learned Single Judges. It is also relevant to mention that the appellant is dealing with public money and is accountable. In such circumstances, this Court is inclined to pass the following order:-



"(i) the order of the Assistant Commissioner of Income Tax, Central Circle - 1, Trichy dated 07.02.2020 under Section 226(3) of the Income Tax 1961 is stayed till 01.04.2020 on condition that the appellant pays the first installment in terms of the order of the learned Single Judge on or before 30.03.2020.

(ii) On such deposit, the stay shall stand renewed and so on till the subsequent installment strictly in terms of the order of the learned Single Judge till 30.07.2020.

(iii) upon payment of the fifth installment on 30.07.2020, there shall be absolute stay.

(iv) the respondents are directed to give necessary instructions to the concerned banks to enable the appellant to operate its bank accounts in its usual course of business.

(v) In case, the appellant fails to pay the amount as per the order of the learned Single Judge, the respondents are also at liberty to initiate appropriate proceedings in accordance with law to recover the tax due from the appellant.

With the above observations, this Writ Appeal is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (Records)

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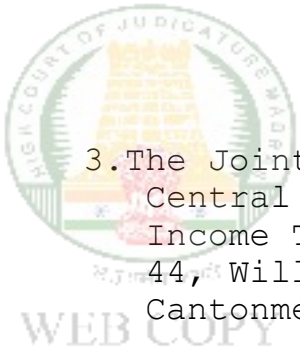
/ /2020

Sub Assistant Registrar (CS)

To

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+1 CC to M/s.P.SUBBARAJ, Advocate (SR-10435[F] dated 06/03/2020)

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