BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 24.03.2020

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THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.(MD)Nos.6026, 6028 to 6034 of 2020

Karthikeyan ... Petitioner(s) in WP(MD). 6026/ 2020

G.Anbuselvam ... Petitioner(s) in WP(MD). 6028/ 2020

Selvan ... Petitioner(s) in WP(MD). 6029/ 2020

K.M.Medical Stores,
Rep by its Partner G.Ilankannan
... Petitioner(s) in WP(MD). 6030/ 2020

V.M.And Co.,
Rep. by its Managing Partner V.Manoharan
... Petitioner(s) in WP(MD). 6031/ 2020

Manikandan, ... Petitioner(s) in WP(MD). 6032/ 2020

V.M.And Co.,
Rep. by its Managing Partner V.Manoharan
... Petitioner(s) in WP(MD). 6033/ 2020

Vinodh Kumar ... Petitioner(s) in WP(MD). 6034/ 2020

- Vs. -

1.The Commissioner of Income Tax(Appeals),
Office of the Commissioner of Income Tax, Madurai.

2.The Income Tax Officer,
Ward-2, Virudhunagar, Virudhunavar District.
... Respondent(s) in WPs(MD). 6026,6030/ 2020

1.The Commissioner of Income Tax(Appeals),
Office of the Commissioner of Income Tax, Madurai.

2.The Assistant Commissioner of Income Tax,
O/o.The Assistant Commissioner of Income Tax,
Circle-1 Virudhunagar.... Respondent(s) in WPs(MD).6028,6029/ 2020

1.The Commissioner of Income Tax(Appeals),
Office of the Commissioner of Income Tax, Madurai.

2.The Assistant. Commissioner of Income Tax,
Circle-I, Karaikudi. ... Respondent(s) in WPs(MD).6031, 6033/ 2020

1.The Commissioner of Income Tax(Appeals),
Office of the Commissioner of Income Tax, Madurai.

2.The Income Tax Officer,
Non Corp.Ward 2(4), Madurai - 625 002.
... Respondent(s) in WP(MD). 6032/ 2020

1.The Commissioner of Income Tax(Appeals),
Office of the Commissioner of Income Tax, Madurai.

2.The Assistant Commissioner of Income Tax,
Corporate Circle-1, Madurai - 625 002.
... Respondent(s) in WP(MD). 6034/ 2020

Prayer in WP(MD). 6026/ 2020 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to directing the 2nd respondent not to initiate recovery proceedings until the disposal of the petitioners appeal dt 12.1.2020 file before the 1st respondent

Prayer in WP(MD). 6028/ 2020 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to directing the 2nd respondent not to initiate recovery proceedings until the disposal of the petitioners appeal dt 29.1.2020 file before the 1st respondent

Prayer in WP(MD). 6029/ 2020 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to directing the 2nd respondent not to initiate recovery proceedings until the disposal of the petitioners appeal dated 11-01-2020 file before the 1st respondent

Prayer in WP(MD). 6030/ 2020 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to directing the 2nd respondent not to initiate recovery proceedings until the disposal of the petitioners appeal dt 13.1.2020 file before the 1st respondent

Prayer in WP(MD). 6031/ 2020 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to directing the 2nd respondent not to initiate recovery proceedings for the assessment year 2015-2016 until the disposal of the petitioners appeal dt 28.1.2020 filed before the 1st respondent

Prayer in WP(MD). 6032/ 2020 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to directing the 2nd respondent not to initiate recovery proceedings until the disposal of the petitioners appeal dated 24-01-2020 file before the 1st respondent

Prayer in WP(MD). 6033/ 2020 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to directing the 2nd respondent not to initiate recovery proceedings for the assessment year 2017-2018 until the disposal of the petitioners appeal dt 17.3.2020 filed before the 1st respondent.

Prayer in WP(MD). 6034/ 2020 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to directing the 2nd respondent not to initiate recovery proceedings until the disposal of the petitioners appeal dt 24.1.2020 file before the 1st respondent.

For Petitioner : No appearance

For Respondents : Mrs.S.Srimathy
Special Government Pleader

COMMON ORDER

These writ petitions have been filed to direct the second respondent not to initiate recovery proceedings, until the disposal of the petitioner's appeal, filed before the first respondent.

2. Heard learned Special Government Pleader appearing for the respondents. No representation on behalf of the writ petitioners.

3. The petitioners are the assesses under the Income Tax Act and they filed returns, for the Assessment year 2017-2018, admitting the total income and they were selected for scrutiny and assessment was completed in the year 2017. Subsequently, Notice under Section 143(2) of Income Tax Act, was issued to the petitioners. The second respondent subsequently issued notice under Section 142(1) of Income Tax Act.

4. As against that, the petitioners have filed appeals before the first respondent, which are pending. In the meanwhile, the second respondent urged the petitioners to pay the demand immediately or otherwise follow up action shall be taken as per the provision of Income Tax Act, 1961. Further, the second respondent orally threatened the petitioners to attach the bank account. Therefore, the petitioners filed applications before the second respondent stating that appeals are pending before the first respondent Appellate Authority and further requested the second respondent not to initiate any action regarding recovery of tax. As per Instruction No.96 (F.No.1/6/69/ITCC), dated 21.08.1969, issued by the Central Board of Direct Taxes, no recovery should be effected of a disputed demand where the determination of tax in an assessment is substantially higher than the returned income. The instruction is binding on all Income Tax Authorities under Section 119 of the Income Tax Act. However, the second respondent continuously urging the petitioners to pay the demand immediately or otherwise follow up action shall be taken a sper the provisions of the Act. Challenging the same, these present Writ Petitions have been filed.

5. The learned Special Government Pleader appearing for the respondents would submit that there is absolutely no merit whatsoever in the contention of the petitioners. He would further submitted that unless restrained order is passed by the Appellate Authority, there is nothing wrong in 2nd respondent initiating further proceedings against the petitioners. Hence, the learned Special Government Pleader prays for dismissal of the writ petitions.

6. On perusal of the records, the second respondent has passed the assessment orders, confirming their proposal and levied Income Tax on the petitioners. Against the order of the 2nd respondent, the petitioners have filed appeals before the Appellate Authority and the same are pending. Since the second respondent urging the petitioners to pay the demand immediately, the petitioners are before this Court with these present Writ Petitions.

7. Admittedly, the petitioners did not get any interim order from the Appellate Authority. After non-payment of the tax arrears, the petitioners filed the appeals. As rightly contended by the learned Special Government Pleader for the respondent, in the absence of any interim order from the Appellate Authority, there is nothing wrong in 2nd respondent initiating further proceedings against the petitioners. These Writ Petitions itself misconceived. Hence, this Court is not inclined to grant the relief as sought for by the petitioners.

8. In the result, the Writ Petitions are dismissed. However, this Court will not stand in the way of the petitioners to secure an

interim order from the Appellate Authority, as against the order of the 2nd respondent. However, there shall be no order as to costs.

Sd/-

Assistant Registrar ()

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

To

1.The Commissioner of Income Tax (Appeals),
Office of the Commissioner of Income Tax,
Madurai.

2.The Income Tax Officer,
Ward - 2, Virudhunagar,
Virudhunagar District.

3.The Assistant Commissioner of Income Tax,
Circle-1 Virudhunagar

4.The Assistant. Commissioner of Income Tax,
Circle-I, Karaikudi.

5.The Income Tax Officer,
Non Corp.Ward 2(4), Madurai - 625 002.

6.The Assistant Commissioner of Income Tax,
Corporate Circle-1, Madurai - 625 002.

+1 CC to M/s.S.SRIMATHY, Advocate (SR-12958[F] dated 24/03/2020)

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SDS (17.06.2020) 5P-8C