IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :09.07.2021

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.NO.8312 OF 2012
AND
M.P.NO.1 OF 2012

Smt.A.Haleela ...Petitioner

Vs

The Tax Recovery Officer-XVIII,
Office of the Tax Recovery Officer – XVIII,
Aayakar Bhawan, Annexe Building,
6th Floor, 121, Mahatma Gandhi Road,
Nungambakkam, Chennai – 600 034. ... Respondent

PRAYER : Writ Petition filed Under Article 226 of the Constitution of India to issue of Writ of Certiorari, calling for the records relating to order TR.No.5/2003-04/XVIII dated 21.03.2012 of the respondent and quash the same.

For Petitioner : Mr.K.R.Deepak
M/s.Sampathkumar and Associates

For Respondent : M/s.Hema Murali krishnan
Senior Standing counsel
[For Income Tax]

O R D E R

The relief sought for in the present writ petition is to call for the records relating to order TR.No.5/2003-04/XVIII dated 21.03.2012 of the respondent and quash the same.

2. The petitioner states that as per the rental agreement dated 10.02.1999, she leased out her house at premises bearing Door No.4/79, III Main Road, Kapaleeswarar Nagar, Neelangarai, Chennai – 600 041, an individual bungalow with all fittings and fixtures therein to Mrs.Sathee. As per the rental agreement, the

tenant / Mrs.Sathee has to pay rent of Rs.50,000/- per month and an advance of Rs.5,00,000/-, which was paid at the time of delivering possession. The lease agreement was renewed from time to time. However, the tenant failed and neglected to pay the rent due by her from 01.09.2006. She vacated the premises abruptly without any prior notice in February, 2007. With these facts, the respondents sent a notice under Section 226(3) of the Income Tax Act in proceedings dated 02.09.2003, seeking to attach the rental advance of Rs.5,00,000/-. The petitioner sent letters to the respondent, explaining that Mrs.Sathee owed her more than Rs.5,00,000/- and she was entitled to adjust the advance towards the dues. Without considering the said explanation submitted by the petitioner, the respondent passed an order impugned in proceedings dated 21.03.2012. Thus, the petitioner is constrained to move the present writ petition.

3. The impugned order dated 21.03.2012 states that in letter dated 09.03.2012, the petitioner have stated that she had no amount due to her tenant as on the date of receipt of notice under Section 226(3) (dated:02.09.2003) and the petitioner is not liable to accept the request made by the respondent. The respondent referred the reply submitted by the writ petitioner dated 19.01.2005, wherein the petitioner has stated that she was holding the advance amount of Rs.5 Lakhs collected from Mrs.Sathee towards rental advance and it was not refunded to the tenant. In the meantime, the petitioner was reminded about the notice vide letter dated 16.12.2004 along with a Summons under Rule 83 of II Schedule for which there was no reply / compliance from the petitioner side. Thus, the respondent passed the impugned order to deposit the amount due.

4. This Court is of the considered opinion that if at all the petitioner is aggrieved or some factual disputes are to be raised with reference to her letter or regarding the findings arrived based on the letter submitted by the petitioner, she has to file an appeal under Rule 11 to II Schedule of the Income Tax Act before the Tax Recovery Officer. Thus, the petitioner is at liberty to file an appeal under the said provision before the Tax Recovery Officer and the officer competent is empowered to adjudicate the facts, circumstances, disputes raised and pass an order on merits and in accordance with law.

5. In this regard, the petitioner is at liberty to prefer an appeal within a period of four weeks from the date of receipt of a copy of this order and in the event of filing any such appeal, the Tax Recovery Officer shall adjudicate the same by condoning the delay, if any and pass orders on merits and in accordance with law by affording an opportunity to the writ petitioner as expeditiously as possible.

6. With these directions, the writ petition stands disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS-VII)

// True Copy//

Sub Assistant Registrar

Kak

To

The Tax Recovery Officer XVIII,
Office of the Tax Recovery Officer – XVIII,
Aayakar Bhavwan, Annexe Building,
6th Floor, 121, Mahatma Gandhi Road,
Nungambakkam, Chennai – 34.

+1cc to M/s.Sampathkumar and Associates, Advocate, SR.No.32437

+1cc to M/s.Hema Murali krishnan, Advocate, SR.No.32560

W.P.No.8312 of 2012

PCH(CO)
RLP(02/08/2021)