IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.09.2021

CORAM

THE HONOURABLE MR.JUSTICE M.SUNDAR

W.P.No.9930 of 2019
and W.M.P.No.10512 of 2019

S.Elambharathi ...Petitioner

Vs

1. The Principal Commissioner of Income Tax,
   Central - 2, Chennai,
   III Floor, No.46, Mahatma Gandhi Road,
   Chennai - 600 034.

2. The Deputy Commissioner of Income Tax,
   Central Circle - 2(4),
   Investigation Wing, Room No.111,
   I Floor, No.46/108, Mahatma Gandhi Road,
   Chennai - 600 034.

3. The Commissioner of Income Tax(Appeals)-19,
   Room No.303, No.46/108, M.G.Road,
   Chennai - 600 034. ...Respondents

Prayer: Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus calling for the records in ITA.No.154 to 156/18-19/CIT(A)/18-19 dated 27.03.2019 on the file of the 3rd respondent relating to the assessment year 2015-16 to 2017-18, quash the same and direct the respondents not to take any coercive steps till the disposal of the appeal pending before the third respondent.

For Petitioner : Mr.E.Om Prakash, Sr.Counsel
for Ms.K.Sunitha

For Respondents : Mr.A.N.R.Jayapratap,
Jr. Standing Counsel (IT)

ORDER

Mr.E.Om Prakash, learned Senior Advocate instructed by the counsel on record for the writ petitioner and Mr.A.N.R.Jayapratap, learned Junior Standing Counsel for Income Tax (Revenue Counsel) on behalf of all the three respondents are before this virtual Court.

2.Learned Senior counsel submits that the writ petitioner has preferred three statutory appeals (statutory appeals under Section 244A of the Income Tax Act, 1961 (hereinafter referred as 'IT Act' for the sake of brevity) being ITA.No.154 to 156/18-19/CIT(A)/18-19 pertaining to three assessment years viz., 2015-2016, 2016-2017 and 2017-2018.

3.In the light of the trajectory which the matter has taken today and owing to the order I propose to make, it is not necessary to delve into facts much less dilate qua facts with details.

4.Suffice to say that the writ petitioner has assailed the assessment orders qua aforementioned three assessment years more particularly (not limited to) regarding additions.

5.Pending statutory appeals before the Statutory Appellate Authority (To be noted, the third respondent in the captioned writ petition is the Statutory Appellate Authority), the writ petitioner moved a stay petition qua collection of disputed demand and the stay petition came to be disposed of by the third respondent by way of an order dated 27.03.2019. A scanned reproduction of the said order is as follows:

GOVERNMENT OF INDIA
OFFICE OF THE COMMISSIONER OF INCOME-TAX, (APPEALS)-19
Room No.303, New No.46, Old No.108,
Mahatma Gandhi Road, Chennai – 600 034.

ITA No.154 to 156/18-19/CIT(A)/18-19

Date: 27.03.2019

To,

Shri S.Elambharathi
New No.364, Old No.210, Lloyds Road,
Flat No.5, Ground Floor, "Kurunam Court"
Gopalapuram,
Chennai-600 086.

Sir,

Sub: Stay of collection of disputed demand – in the case of Your own – AY. 2015-16 to 2017-18 – [illegible]

The above subject, may please be referred.

As per record, the assessments for the AYrs.2015-16 to 2017-18 in your case were completed u/s.143(3) r.w.s. 153C dated 30.12.2018. The income assessed and demand raised is given below.

Table 1

AYrs.	Income assessed	Demand	20% of demand
2015-16	3,93,14,200	1,71,77,772	34,35,554
2016-17	1,17,28,110	46,32,637	9,26,527
2017-18	7,92,38,600	3,47,38,389	69,47,678
	TOTAL	5,65,48,798	1,13,09,759

It is observed that, the additions have been made based on the authenticated incriminating seized material seized from M/s.SRS Mining. Based on the noting in the seized materials alone addition of Rs.6,97,88,600 for the AY.2017-18, Rs.60,64,000 for the AY.2016-17 and Rs.3,66,26,000 for the AY.2015-16 have been made and demands have been raised in respective years.

On perusal of your stay petition, you have claimed that the AO had erroneously added the amount, but the same cannot be accepted for the reason that the additions have been made based on evidences seized from your premises. Further you have not proved the financial distress, if any. Therefore your request for stay cannot be considered in toto. However, considering the facts of your case you are directed to pay 20% of the demand immediately on or before 30.3.2019 i.e., Rs.1,13,69,759 on payment of 20%, the balance 80% ie. Rs.4,54,79,039 will be stayed for a period of 6 months or till the disposal of appeal whichever is earlier.

Further you are requested to cooperate in appellate proceedings and the department preserves the right to adjust any refund arising in your case.

Yours faithfully,

(JASDEEP SINGH)
Commissioner of income-tax,
(Appeals)-19, Chennai-34.

6.Assailing the aforementioned 27.03.2019 order of the third respondent (hereinafter referred as 'impugned order' for the sake of convenience and clarity), captioned writ petition was filed on 01.04.2019. When the matter came up before Hon'ble Predecessor Judge on 02.04.2019, an interim order in W.M.P.No.10512 of 2019 was made and the same reads as follows:

> 'Mr.A.P.Srinivas, learned senior standing counsel takes notice for the respondents and seeks three (3) weeks time to obtain instructions and to file a counter. Let the counter be filed on or before 25.04.2019, with the copies served on the other side.
>
> 2.Heard, Mr.A.L.Somayaji, learned Senior counsel for Ms.K.Sunitha, learned counsel for the petitioner.
>
> 3.The order of assessment passed in the case of the petitioner dated 30.12.2018 refers to search in the case of third parties on 08.12.2016 and parallel search action in the case of the petitioner on the same date. However, a perusal of the order of assessment reveals that the seizures effected are only from the third party premises and nothing incriminating has been seized from the petitioner's premises. While this is so, in the last paragraph at page 1 of the impugned order,

the officer states that no prima facie case is made out since the additions have been made 'based on evidences seized from your premises'. This is factually incorrect. In the aforesaid circumstances, there shall be an Interim stay of recovery as prayed for.'

7.There is no disputation or disagreement that the aforementioned interim order is now operating.

8.The aforementioned statutory appeals are of the year 2019 and the aforementioned interim order has been operating for more than 2 ½ years now. This Court is also informed that the statutory appeals are ripe for final disposal and the third respondent will be able to dispose of the main statutory appeals within four weeks from today. Learned Senior Counsel for writ petitioner, on instructions, submits that the writ petitioner will cooperate with the Appellate Authority in this exercise and ensure expeditious disposal of the main statutory appeals.

9.Therefore, instead of going into the correctness or otherwise of the impugned order, it would serve the interest of all concerned i.e, the assessee as well as the Revenue (uncertainty qua assessee will come to an end and the interest of the Revenue will also be protected) the third respondent/Appellate Authority is directed to take up the main statutory appeals in ITA.No.154 to 156/18-19/CIT(A)/18-19 and dispose of the same on their own merits and in accordance with law as expeditiously as possible or in other words as expeditiously as his official business would permit but in any event within four weeks from today i.e., on or before 28.10.2021. Till disposal of the statutory appeals, the aforementioned interim order dated 02.09.2021 made by Honourable Predecessor Judge will continue to operate. If the outcome of the statutory appeals is adverse to the writ petitioner, the interim order will continue to operate for another fortnight from the date of disposal of the statutory appeals.

10.Captioned writ petition is disposed of with the above directive. Consequently, WMP is disposed of on same line. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

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   III Floor, No.46, Mahatma Gandhi Road,
   Chennai - 600 034.

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   Chennai - 600 034.

+3ccs to M/.K.Sunitha, Advocate, S.R.No.51001
+1cc to M/s.A.P.Srinivas, Advocate, S.R.No.51623

W.P.No.9930 of 2019

SJ[co]
NSK 08/10/2021