IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.07.2021

CORAM

THE HONOURABLE DR. JUSTICE ANITA SUMANTH

W.P. No.11399 of 2021
and WMP.Nos.12083 & 12085 of 2021

M/s.Palaniyappan Ganapathy
PAN: AHPPP3037N,
T/D2, Anna Fruit Market,
Koyembedu, Chennai-600 092. ...Petitioner

Vs.

1.Principal Commissioner of Income Tax, Chennai-9
AAYAKAR BHAVAN,
121-MG Road, Chennai-600 034.

2.Deputy Commissioner of Income Tax,
Non-corporate Circle 8(1), CHE,
Room No.507, Annexe Building – V Floor,
AAYAKAR BHAVAN,
121-MG Road, Chennai-600 034. ...Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue Writ of Certiorarified Mandamus, calling for the records on the file of the 2nd Respondent relating to the application made by the Petitioner for the assessment year 2017-18 and quash the order of the 2nd Respondent in Order No.ITBA/AST/S/143(3)/2019-20/1021982444(1) dated 09.12.2019 for the Assessment Year 2017-18 and direct the 2nd Respondent to not to treat the Petitioner as an Assessee in default pending disposal of the appeal filed by the Petitioner before the Commissioner of Income Tax (Appeals), Coimbatore-9, refund the amounts collected by way of the Disputed tax demanded to the Petitioner.

For Petitioner : Mr.Ramana Kumar

For Respondents : Mrs.Hema Muralikrishnan,
Senior Standing Counsel

O R D E R

Heard Mr.Ramana Kumar, learned counsel for the petitioner and Mrs.Hema Muralikrishnan, learned Senior Standing Counsel for the revenue.

2. The petitioner has challenged an order of assessment passed under the provisions of the Income Tax Act, 1961 (Act) by R2/the Assessing Officer for assessment year 2017-18. This prayer is not liable to be granted in so far as the petitioner has infact challenged the order by way of statutory appeal, albeit with a delay of 9 days before the Commissioner of Income Tax (Appeals). The reason for delay is stated to be ill-health for which medical records are placed on record. This is a matter that shall be gone into by the Commissioner of Income Tax (Appeals) and decided in accordance with law.

3. Pursuant to passing of the assessment order, it appears that R2 has attached the bank account of the petitioner and has also appropriated the entirety of the balances being an amount of Rs.1.3 crores (approx.). The demand in this case is a sum of Rs.1.66 crores (approx.) and hence by way of the appropriation substantially the whole of the amount has been recovered.

4. Insofar as the petitioner has applied before R2 for a stay of demand pending appeal and the same has not been disposed by way of a speaking order, it would be appropriate to direct the assessing authority i.e. R2 to list the stay application for hearing, hear the petitioner virtually and thereafter pass a speaking order bearing in mind the threefold conditions to be taken into account in disposal of the application.

5. Let this exercise be completed within a period of four weeks from today. The petitioner also prays for early disposal of the first appeal. No serious objection is expressed to this prayer, which is acceded to.

6. The learned standing counsel will convey the direction to the first appellate authority to dispose the appeal of the petitioner within a period of sixteen (16) weeks from today, after hearing the petitioner, as the appellate authority is not arrayed as a respondent.

7. This writ petition is disposed. Connected miscellaneous petitions are closed. No costs.

Sd/-

Assistant Registrar(CS-III)

//True copy//

Sub Assistant Registrar

vs

To

1.Principal Commissioner of Income Tax, Chennai-9
AAYAKAR BHAVAN,
121-MG Road, Chennai-600 034.

2.Deputy Commissioner of Income Tax,
Non-corporate Circle 8(1), CHE,
Room No.507, Annexe Building – V Floor,
AAYAKAR BHAVAN,
121-MG Road, Chennai-600 034.

+1cc to Mrs.Hema Muralikrishnan, Advocate SR.No.30777

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PMK(CO)

GMY(15/07/2021)