IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :07.07.2021

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THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.2489 of 2018
and
W.M.P.No.23298 of 2020

Mr.Kavin Kumar Kandaswamy ...Petitioner

Vs

1.The Chief Commissioner of Income Tax,
Coimbatore Region,
Income Tax Department,
4th Floor, Annex Building,
No.63, Race Course Road,
Coimbatore – 641 018.

2.The Principal Commissioner of Income Tax-2
Income Tax Department,
2nd Floor, Annex Building,
No.63, Race Course Road,
Coimbatore – 641 018.

3.The Joint Commissioner of Income Tax,
Non-Corporate Range – 3,
Income Tax Department,
Annex Building,
No.63, Race Course Road
Coimbatore – 641 018.

4.The Income Tax Officer,
Ward-2,
Income Tax Department,
Christo Building, 2nd Floor,
State Bank Road,
Ootacamund – 643 001. ...Respondents

PRAYER : Writ Petition filed Under Article 226 of the Constitution of India to issue of Writ of Certiorari, to call for the records of the 4th respondent in PAN:AXSPK 2172N/W-2/2017-18 dated 08.12.2017 and quash the impugned notice / order issued under Section 226(3) of the Income Tax Act, 1961.

For Petitioner : Mr.S.Sridhar

For Respondents : Mr.A.P.Srinivas
Senior Standing counsel
[For Income Tax]

O R D E R

The lis on hand is filed, challenging the Notice issued under Section 226(3) of the Income Tax Act, 1961 [hereinafter referred to as 'Act] in proceedings dated 08.12.2017.

2. The impugned Notice states that a sum of Rs.5,00,00,000/- (Rupees Five Crore only) is due to M/s.Riverside Public School Group Cases, Kotagiri, on account of tax demand raised under Section 143(3) of the Act for the Assessment Year 2015-16. Thus, the Assessing Officer said that the petitioner is required under Section 226(3) of the Act to pay within 30 days forthwith any amount due from the petitioner to the defaulter or held by the petitioner, any money, for on account of the said assessee up to the amount of arrears shown above and also request the petitioner to pay money which may subsequently become due from the petitioner to him or which the petitioner may subsequently hold for on account of them up to the amount of arrears still remaining unpaid forthwith on the money becoming due or being held by the petitioner as aforesaid as such payment is required to meet the amount due by the tax payer in respect of the tax dues.

3. Section 226(3) contemplates that "The Assessing Officer or Tax Recovery Officer may, at any time or from time to time, by notice in writing require any person from whom money is due or may become due to the assessee or any person who holds or may subsequently hold money for or on account of the assessee to pay to the Assessing Officer or Tax Recovery Officer either forthwith upon the money becoming due or being held or at or within the time specified in the notice not being before the money becomes due or is held so much of the money as is sufficient to pay the amount due by the assessee in respect of arrears or the whole of the money when it is equal to or less than that amount."

4. Invoking the said provision, the impugned notice was issued. The learned counsel for the petitioner made a submission that the petitioner is not liable to pay any tax dues and therefore, he has chosen to challenge the notice issued to him.

5. The learned Senior Standing counsel solicited the attention of this Court with reference to the arrears of tax

paid to the defaulter namely M/s.Riverside Public School Group Cases, Korattur. Thus, the tax dues are to be paid by the said M/s.Riverside Public School Group Cases and the notice was also issued, in order to recover the tax dues by directing the petitioner to pay the dues to be paid by the defaulter to the Income Tax Department. Therefore, if at all, the petitioner is deemed to pay any money to the tax defaulter, the said money is to be paid to the Income Tax Department. This being the spirit of Section 226(3) of the Income Tax Act and the impugned notice also unambiguously states that the dues payable to the defaulter by the writ petitioner is to be paid to the Income Tax Department towards the income tax arrears to be recovered from the defaulter.

6. This being the factum, the petitioner cannot be construed as an aggrieved person nor the notice under Section 226(3) cannot be quashed as far as the petitioner is concerned. Thus, the petitioner is legally bound to deposit the money, if any payable to the tax defaulter to the Income Tax Department and therefore, the petitioner has not established any acceptable ground for the purpose of quashing the impugned notice. In fact, the petitioner has to comply with the impugned notice by depositing the dues to be paid by the petitioner to the tax defaulter to the Income Tax Department.

7. Accordingly, the writ petition in W.P.No.2489 of 2018 stands dismissed. No costs. Consequently, connected miscellaneous petition in W.M.P.No.23298 of 2020 is closed.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

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To

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+1cc to Mr.A.P.Srinivas, Advocate,Sr.31822

W.P.No.2489 of 2018

PCH[co]
NSK 02/08/2021