IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Special Original Jurisdiction)

Wednesday, the Twenty Ninth day of September Two Thousand Twenty One

PRESENT

THE HON`BLE MR.JUSTICE M.SUNDAR

WMP.No.22287 of 2021

IN WP.No.21027 of 2021

SHRI DURAI MURUGAN KATHIR ANAND, [PETITIONER]
S/O. SHRI DURAI MURUGAN,
NO.7, 5TH EAST CROSS STREET,
GANDHI NAGAR, VELLORE 632 006

Vs

1 ADDITIONAL COMMISSIONER OF INCOME TAX, [RESPONDENTS]
CENTRAL RANGE-1,
CHENNAI - 600034

2 DEPUTY / ASSISTANT COMMISSIONER
OF INCOME TAX, CENTRAL CIRCLE -1 (3),
CHENNAI - 600034

Petition praying that in the circumstances stated therein and in the affidavit filed therewith the High Court will be pleased to grant an order of Interim Stay of all further proceedings pursuant to the impugned order in ITBA/AST/F/167/2021-22/1035883599 (1) dated 25.09.2021 for the AY 2019-20 passed by the 1st Respondent, (IN WMP.NO.22287/2021) pending disposal of the above WP.NO.21027/2021.

Order : This petition coming on this day for hearing upon perusing the petition and the affidavit filed in support thereof and upon hearing the arguments of M/S.R.SIVARAMAN, Advocate for the petitioner and of MR.A.N.R.JAYAPRATAP, Junior Standing Counsel, for the Respondents, the court made the following order:-

Mr.R.Sivaraman, learned counsel on record for petitioner/writ petitioner is before this Virtual Court.

2. Read this in conjunction with and in continuation of separate proceedings made in the main writ petition today (29.09.2021), which reads as follows:

'In the captioned writ petition an 'order dated 25.09.2021

bearing reference DIN & Letter No.ITBA/AST/F/167/2021-22/1035883599(1)' [hereinafter 'impugned order' for the sake of convenience and clarity] made by the first respondent has been assailed.

2. Learned counsel for writ petitioner submits that the impugned order has been made by the first respondent under Section 144A of 'The Income-tax Act, 1961 (43 of 1961)' [hereinafter 'IT Act' for the sake of brevity] on an application by the writ petitioner/assessee. In the light of certain seizures made in search qua two persons namely, Damodaran and Vimala at Karigiri Road, Pallikuppam Railway Gate, Katpadi, a proposal to tax the same in the hands of the writ petitioner qua 'assessment year 2019-2020' [hereinafter 'said AY' for the sake of convenience and clarity] and complexities qua such assessment i.e., nature of the case, writ petitioner made an application under Section 144A of IT Act is learned counsel's say.

3. Adverting to the impugned order, learned counsel submits that paragraph No.6 of the impugned order which is the penultimate paragraph (a long paragraph though) learned counsel for writ petitioner submitted that this verbose paragraph is a mere reproduction of show cause notice dated 08.09.2021 bearing reference DIN & Notice No.ITBA/AST/F/153A(SCN)/2021-22/1035370676(1). Learned counsel submits that the first respondent has not applied his mind to the contents of the application of the assessee and has not gone into the nature of the case, amount involved or any other reason and has not even opined that it is neither necessary nor expedient to issue directions (for guidance of AO i.e., 2nd respondent to enable him to complete assessment) under Section 144A of IT Act. According to the learned counsel for writ petitioner, this is a clear infraction of Section 144A of IT Act and therefore, an infarction qua impugned order i.e., fatal to the impugned order.

4. This Court notices that the impugned order has been made by Additional Commissioner of Income Tax (ADDL.CIT) Central Range 1. The provision under which the impugned order has been made is Section 144A of IT Act which makes it clear that the power is vested with the Joint Commissioner (atleast on and from 01.10.1998).

5. Learned counsel for writ petitioner, adverting to the writ petitioner's application (which is at page 14 of the typed set of papers) submits that the receipt chappa/seal dated 21.09.2021 says the office of O/o.The

Additional/Joint Commissioner. Learned counsel for writ petitioner submits that the first respondent may be wearing two hats, but this Court notices that the impugned order has been made only by the Additional Commissioner of Income Tax (Central Range 1).

6. Owing to the language in which Section 144A of IT Act is couched as it is the contention of learned counsel for writ petitioner that the ingredients/determinants therein have not been met qua impugned order and it is not a case where the impugned order says that it is neither necessary nor expedient to issue directions for guidance of AO, a prima facie case has been made out for issue of notice regarding Admission.

7. Mr.ANR.Jayaprathap, learned Junior standing counsel, who is before this Virtual Court accepts notice on behalf of both the respondents. Learned Revenue counsel brings to the notice of this Court that the assessment order has since been made/passed by the Assessing Officer (to be noted, second respondent in the writ petition is Assessing Officer i.e., AO). The assessment order is dated 27.09.2021 and it has been uploaded yesterday i.e., 28.09.2021.

8. Responding to the above, learned counsel for writ petitioner submits that a writ petition is being preferred assailing the assessment order also and therefore, the assessment order being passed will not take the wind out of the sails qua captioned writ petition as the Assessing Officer stands bound by whatever happens to the impugned order when this Court ultimately decides on the impugned order. Learned counsel for writ petitioner submits that at the highest his prayer for interim stay of all further proceedings pursuant to the impugned order may have been overtaken by the assessment order and become infructuous but the captioned writ petition does not meet this fate and the impugned order has to be tested.

9. Learned Revenue counsel submitted that he will file a counter affidavit within a fortnight after giving a advance copy to the counsel for writ petitioner.

10. List under the cause list caption 'NOTICE REGARDING ADMISSION' after Dussehra Vacation. List on 20.10.2021.'

3. In the light of the aforementioned proceedings, captioned Writ

Miscellaneous Petition is disposed of as closed, without expressing any view on merits of the matter solely on the ground that the assessment order has overtaken the interim prayer. There shall be no order as to Costs.

-sd/-
29/09/2021

/ TRUE COPY /

Sub Assistant Registrar (Statistics / C.S.)
High Court, Madras - 600 104.

TO

1 ADDITIONAL COMMISSIONER OF INCOME TAX,
CENTRAL RANGE-1,
CHENNAI - 600034

2 DEPUTY / ASSISTANT COMMISSIONER OF INCOME TAX,
CENTRAL CIRCLE -1 (3),
CHENNAI - 600034

C.C. to M/S.A.P.SRINIVAS, Advocate SR.NO. 5544/2021

Order
in
WMP.No.22287 of 2021

IN WP.No.21027 of 2021

Date :29/09/2021

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TP (06/10/2021)