BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED :**12.07.2021**
CORAM
THE HONOURABLE MRS.JUSTICE J.NISHA BANU
W.P(MD)No.6928 of 2021
and
W.M.P(MD)Nos.5316 & 5319 of 2021

Kodavaasal Town Benefit Fund Ltd.,
Rep. by its Director,
Mr.S.Santhanakrishnan ...Petitioner

Vs.

1.The Assistant Commissioner of Income Tax, Circle 2(1),
III Floor, Trichy Main Building,
Williams Road, Cantonment,
Trichy - 620 015.

2.The Commissioner of Income Tax (Appeals), Tiruchirapalli - 1,
44, Williams Road, Cantonment,Trichy - 620 001.

3.The Bank Manager,
City Union Bank Limited,
45, Bazar Street, Kodavasal 612601,....
Thiruvarur District. ...Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorarified Mandamus, calling for the records relating to the notice issued by the first respondent in DIN & Letter No.ITBA/COM/F/17/2019-20/1026612116(1) dated 14.03.2020 to the third respondent attaching the Bank account and quash the same and direct the first respondent to grant stay of collection of outstanding tax demand pending disposal of the appeal before the second respondent.

For Petitioner : Mr.J.Lenin
For R-1 & R-2 : Mr.N.Dilip Kumar

ORDER

The petitioner has filed this writ petition seeking for issuance of a Writ of Certiorarified Mandamus, calling for the records relating to the notice issued by the first respondent in DIN & Letter No.ITBA/COM/F/17/2019-20/1026612116(1) dated 14.03.2020 sent to the third respondent attaching the Bank account and quash the same and to direct the first respondent to grant stay of collection of outstanding tax demand pending disposal of the appeal before the second respondent.

2. The learned counsel for the petitioner would submit that the petitioner is a Non-banking Finance Company and an Assessee on the file of the first respondent under PAN AADCK0269P and has been regularly filing the return of Income. For the financial year

2016-17, relevant to the Assessment year 2017-18, the petitioner filed the returns on 30.10.2017 admitting the total income of Rs.42,31,820/-. In the mean time, the first respondent issued a show-cause notice dated 07.12.2019 directing the petitioner to give elaborate details regarding cash deposits within two days. But, the petitioner was not able to collect the details and upload the same within the time stipulated. While the matter stood thus, on 29.12.2019, the first respondent has passed the assessment order. Challenging the said assessment order, the petitioner has filed an appeal before the second respondent bearing Appeal No.CIT(A), Tiruchirappalli - 1 / 10691/2019-20. In the meantime, the first respondent issued a notice under Section 226(3) of the Income Tax Act, 1961 to the third respondent/bank herein to recover the tax dues emanating from the order of assessment dated 29.12.2019. Suddenly, the petitioner filed a stay petition before the Deputy Commissioner of Income Tax, Circle 2(1), Trichy, for stay of collection of Tax and the same was forwarded to the second respondent herein, who in turn, forwarded the same to the Principal Commissioner of Income Tax, Madurai on 07.10.2020. In the meantime, the first respondent issued the impugned notice attaching the bank account of the petitioner. Hence, the petitioner has come forward to file this writ petition with the aforesaid prayer.

3. The learned Standing Counsel appearing for the respondents 1 and 2, by reiterating the averments made in the counter affidavit would state that the petitioner has filed an appeal before the appellate authority and the same is pending. Having filed the statutory appeal, the petitioner ought to have agitated his grievance before the appellate authority and therefore, this writ petition is not maintainable.

4. Heard the submissions made on either side and perused the materials available on record.

5. Though a detailed counter affidavit has been filed, the fact remains that the petitioner has filed an appeal before the appellate authority and till date, no final order has been passed in that appeal and for the sake of getting interim orders, the present writ petition has been filed by the petitioner. I am of the opinion that the writ petition involves factual disputes, which requires detailed examination by going through the records. Therefore, without adverting to the merits of the contentions raised either by the learned counsel for the petitioner or the respondents 1 and 2, it would be appropriate to direct the appellate authority, namely, the second respondent herein, to dispose of the appeal filed by the petitioner dated 28.01.2020, within a time frame.

6. Accordingly, the second respondent is directed to dispose of the appeal filed by the petitioner dated 28.01.2020, on merits and

in accordance with law, by affording an opportunity of hearing to the petitioner, within a period of eight weeks from the date of receipt of a copy of this order.

7. With the above direction, the writ petition is disposed of. No Costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (Records)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

pm

Note:(i) In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To:

1.The Assistant Commissioner of Income Tax, Circle 2(1),
III Floor, Trichy Main Building,
Williams Road, Cantonment,
Trichy – 620 015.

2.The Commissioner of Income Tax (Appeals), Tiruchirapalli – 1,
44, Williams Road, Cantonment,
Trichy – 620 001.

+1 CC to M/s.N.DILIP KUMAR, Advocate (SR-22061[F] dated 12/07/2021)

W.P(MD)No.6928 of 2021
12.07.2021

MGJ(23.07.2021) 3P 4C