BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 16.07.2021

CORAM:

THE HONOURABLE MR.JUSTICE **T.S.SIVAGNANAM**

AND

THE HONOURABLE MRS.JUSTICE **S.ANANTHI**

Sub.Appl.[MD]Nos.150, 144, 146 & 152 of 2021

in

Cont.P.(MD).SR.Nos.30488 & 30484 of 2021

and

Cont.P.(MD).SR.Nos.30488 & 30484 of 2021

M/s.V.V.Mineral,
represented by its Partner
S.Jegatheesan
17, Keeraikaranthattu Tisayanvillai,
Tirunelveli - 627 657. : Petitioner in all applications

Vs.

1.Mr.Erulappan Mathusuthan
Assistant Commissioner of Income Tax,
Central Circle – 2,
Madurai.

2. Mr.Rajesh Kumar,
Joint Commissioner of Income Tax,
Central – 1,
Madurai. : Respondents in all applications

Common Prayer in Sub.Aplc(MD).Nos.150, 144, 146 & 152 of 2021: Petitions are filed under Section 151 C.P.C praying to accept the cause title in so for the as the second Contemnor concern in the above Contempt Petitions, respectively.

Common Prayer in Sub.Aplc(MD).Nos.144 & 146 of 2021: Petitions filed under Section 15 C.P.C praying to implead the 2nd Respondent herein as 2nd contemnor in the above contempt petitions, respectively.

Common Prayer in Cont.P.(MD).SR.Nos.30488 & 30484 of 2021: Contempt Petitions are filed under Section 11 of the Contempt Court Act, 1971, to punish the 1st and 2nd Contemnor herein for wilful disobedience of the order passed by this Court in Writ Miscellaneous Petition (MD).Nos.7735 and 7732 of 2021 in Writ Petition (MD) Nos.10020 and 10019 of 2021 dated 11.06.2021, respectively.

Common Prayer in WMP(MD).Nos. 7732 & 7735 of 2021 :

Writ Miscellaneous Petitions filed under Article 226 of the Constitution of India, to Direct the 3rd respondent to treat the application filed by the petitioner u/s 245C of the Income Tax Act, 1961 before the ITSC (Income Tax Settlement Commission, Chennai) on 09.03.2021 as a pending application as per the provisions amended by the Finance Act, 2021, pending disposal of this writ petitions.

Common Prayer in WP(MD).Nos.10019 & 10020 of 2021 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a writ direction or order in the nature of Declaration or any other appropriate writ, order or direction, declaring the amendment to the Income Tax Act, 1961 in Section 245A by inserting sub clause (da), (ea) and (eb), 245B, 245BC, 245BD, proviso to 245C, 245D, 245DD, 245F, 245G, 245H and Insertion of new Section 245AA and 245M by way of Sections 54 to 65, Finance Act, 2021 with retrospective effect from 01.02.2021 as arbitrary, illegal and void and infringing the fundamental rights conferred under Article 14, 19(i)(g) 20, 20(2), and 21 of Constitution of India, 1950 thus unenforceable and unconstitutional.

In all applications

For Petitioner : Mr.R.Sivaraman

For Respondents : Mr.T.R.Senthil Kumar
Senior Standing Counsel
assisted by Mrs.K.G.Usharani,
Junior Standing Counsel

COMMON ORDER

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[Order of the Court was made by **T.S.SIVAGNANAM, J.**]

We have heard Mr.R.Sivaraman, learned counsel for the petitioner and Mr.T.R.Senthil Kumar, learned Senior Standing Counsel assisted by Mrs.K.G.Usharani, learned Junior Standing Counsel for the respondents.

2.These applications have been filed to accept the cause title in the contempt petitions.

3.The petitioner has also filed W.M.P(MD).Nos.8744 and 8737 of 2021 in W.P(MD) Nos.10019 and 10020 of 2021, for stay of the order of assessment, dated 25.06.2021 passed by the fourth respondent Assessing Officer. The connected matter came up before this Court on 15.07.2021, are also listed today.

4.We pointed out to the learned Senior Standing Counsel for the Revenue that the action of the department in passing the Assessment order and uploading the same to the official Email ID of the assessee was a blatant violation of the order and direction issued by the Court, dated 11.06.2021.

5.Pursuant to these observations, the learned Senior Standing Counsel sought for a days time, to get necessary instructions from the department and accordingly, today the learned senior standing counsel for the Revenue has produced an order passed by the Assessing Officer, dated 15.07.2021 and by way of illustration, we refer to the order in the case of the Assessee M/s.V.V.Minerals, Tirunelveli, dated 15.07.2021. The order reads as follows:

> "**Order:**
>
> The Assessment Orders in the case of the assessee for the Assessment Years 2012-14 to AY 2019-20 were passed and uploaded in ITBA on 24/25.06.2021. There is an interim order of the Hon'ble Madurai Bench of Madras High Court dated 11.06.2021 [cited under ref] which clearly directed that -"*Assessment proceedings should not be interdicted and it should proceed and passing a final order, keeping to a sealed cover is akin to not giving effect to the assessment order. If such procedure is adopted that the interest of not only the assessee as well as the department will be protected, when the final decision is taken on the declaratory relief sought for."* This direction was not brought to the attention of the Assessing Officer or other officers in the hierarchy. As a result, the above mentioned assessment orders were passed in ITBA and the assessment orders were communicated to the assessee, which was against the direction of the Hon'ble High Court.
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> When the matter came up before the Hon'ble High Court on 15.07.2021, the Hon. High Court has pronounced the orders that an order has to be passed to the effect that the assessment order shall not be given effect and the resultant demand shall be kept in abeyance pending the finality of the Writ Petitions filed by the assessee before the Hon'ble

High Court challenging the abolition of Income Tax Settlement Commission. Under these circumstances, the above mentioned assessment orders shall not be given effect and the resultant demand shall be kept in abeyance pending the finality of the Writ Petitions [cited under ref] filed in the Hon'ble High Court and the resultant demand will not be enforced until such time."

6.In the light of the above order, this Court is of the considered view, the interest of the assessee has been sufficiently protected and as the Assessing Officer has in no uncertain terms stated that the assessment order shall not be given effect to and the resultant demand shall be kept in abeyance, pending the finality of the Writ Petitions filed before this Court and the resultant demand will not be enforced until such time.

7.It is submitted by the learned counsel for the petitioner that in the event, there arises a need for the assesses to challenge the assessment order, which have been passed and uploaded and now agreed to be not given effect to, then the assessee's interest should be protected.

8.We have heard Mr.T.R.Senthilkumar, learned senior standing counsel on the above submission.

9.The Assessee's request appears to be reasonable. Therefore, we make it clear that in the event, the assessee is required to challenge the assessment orders which have been now passed by the Assessing Officer and kept in abeyance, by way of filing an appeal or otherwise, the period from, the date of filing the writ petition i.e., on 09.06.2021 till the Writ Petitions are disposed of shall be excluded, while computing limitation.

10.With the above observations, the Sub Applications are disposed of. Consequently, the contempt petitions are also closed at the S.R stage itself.

Sd/-

Assistant Registrar(CO)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

kmm/rm

Note : 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.Mr.Erulappan Mathusuthan
Assistant Commissioner of Income Tax,
Central Circle – 2,
Madurai.

2. Mr.Rajesh Kumar,
Joint Commissioner of Income Tax,
Central – 1,
Madurai.

Copy to
The Section Officer, Contempt Section,
Madurai Bench of Madras High Court, Madurai.

+2 CC to M/s.M.P.SENTHIL, Advocate (SR-23022 & 23023[F] dated 19/07/2021)

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mj(CO)
TR(10.08.2021) 5P 6C