



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 04.10.2021

CORAM:

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

CONT P (MD) No.1116 of 2020

in

WMP (MD) No.82 of 2019

in

WP (MD) No.109 of 2019

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S.Gurushankar

... Petitioner

Vs.

A.Sornam,
Assistant Commissioner of
Income Tax,
Central Circle-I, Madurai - I,
Kulamangalam Main Road,
Madurai - 625 002.

... Respondent

Prayer: Contempt Petition filed under Section 11 of the Contempt of Courts Act, 1971, to punish the respondent/contemnor for the contempt committed of the order passed by this Court dated 04.01.2019 in WMP(MD)No.82 of 2019 in WP(MD)No.109 of 2019.

Prayer in WMP(MD) . 82/ 2019 :

To pass ad interim stay of the operation of the impugned order dated 29/11/2018 PAN:ADSPG8325M/CC-1/MDU/2018-19 of the second respondent in respect of the revised assessment for the assessment year 2015-16 in the case of the petitioner.

Prayer in WP(MD) . 109/ 2019 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a writ of Certiorarified Mandamus, calling for the records of the second respondent (Deputy Commissioner of Income Tax, Central Circle-1, Madurai) in the revised order of assessment in PAN:ADSPG8325M/CC-1/MDU/2018-19 giving effect to the orders of the Commissioner of Income Tax (Appeals-19, Chennai) under section 143 (3) of the IT Act dated 29/11/2018 in respect of for the assessment 2015-16 in the case of the petitioner,quash the same.

For Petitioner

: Mr.K.Subramanian,
Senior Counsel for Mr.S.Ramesh

For Respondent

: Mrs.S.Srimathy, standing counsel



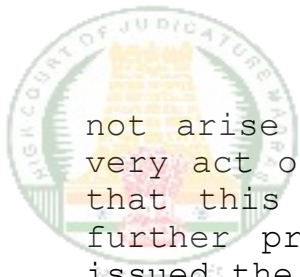
ORDER

The petitioner herein filed WP(MD)No.109 of 2019 challenging the order dated 29.11.2018 PAN : ADSPG8325M/CC-1/MDU/2018-19 passed by the Deputy Commissioner of Income Tax, Central Circle-1, Madurai (I/C), Madurai in respect of the assessment year 2015-16. This Court vide order dated 04.01.2019 in WMP(MD)No.82 of 2019 had granted interim stay of the operation of the said order. There is no dispute that the interim stay is still in operation. In the meanwhile, the Assistant Commissioner of Income Tax, Central Circle-1, Madurai issued notice of demand under Section 156 of the Income Tax Act, 1961 on 23.03.2020 calling upon the petitioner to pay a sum of Rs.1,33,57,360/-. According to the petitioner, issuance of the said notice of demand constitutes a willful breach of the interim order granted by this Court.

2. Statutory notice was issued and the contemnor appeared before this Court and filed an affidavit justifying the issuance of the said notice of demand.

3. The learned Senior Counsel appearing for the petitioner submitted that the said notice of demand was issued even before filing of an application for vacating the interim order of stay granted by this Court. He pointed out that the petitioner was originally slapped with an assessment order dated 31.12.2016 in respect of the assessment year 2015-16. Aggrieved by the same, the petitioner filed an appeal before the Commissioner of Income Tax (Appeals), Chennai. The appellate authority passed an order dated 14.09.2018 partly allowing the petitioner's appeal. The Deputy Commissioner of Income Tax thereafter passed the order dated 29.11.2018 purporting to give effect to the order of the appellate authority.

4. The stand of the petitioner in the writ petition is that the said order dated 29.11.2018 had been passed without noticing that the appellate authority had granted 100% deduction under Section 80-1B (11-C) and without taking note of the fact that the petitioner had been granted tax holiday for five years. The learned Senior Counsel pointed out that only on 05.08.2019, the contemnor filed the appeal before the Income Tax Appellate Tribunal with an application to condone the delay of 235 days in filing the appeal. It is the contention of the learned Senior Counsel that the contemnor had suppressed material facts while filing the appeal before the Tribunal. The contemnor had not disclosed the fact of the pendency of the writ petition. The outcome of such an appeal would have a direct bearing on the outcome of the writ petition filed before this Court. According to him, after purporting to give effect to the order of the appellate authority, when the petitioner had challenged the resultant order, the question of filing an appeal challenging the appellate authority's order will

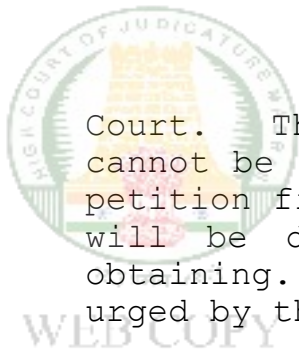


not arise at all. According to the learned Senior Counsel, the very act of filing the appeal is contumacious. He also would submit that this Court had granted an unconditional interim stay of all further proceedings. Therefore, the contemnor ought not to have issued the impugned notice of demand. He would further contend that when the petitioner applied for rectification in respect of the orders passed by the subsequent assessment orders by invoking Section 115JC, the contemnor summarily rejected the same by stating that the said statutory provision is very much applicable to the petitioner. The learned Senior Counsel would point out that the applicability of the said provision is pending before this Court and when by a reasoned order this Court had granted interim stay, a contra view could not have been expressed by the contemnor. The learned Senior Counsel also placed reliance on the decisions reported in 2005 SCC Online Guj 423, (2014) 1 SCC 674, (2014) and SCC Online All 16144.

5. Per contra, the learned standing counsel appearing for the department submitted that no contempt has been committed and she called for the dismissal of the contempt petition.

6. I carefully considered the rival contentions and went through the materials on record. The contemnor herein can be said to have committed contempt only if it is shown that the order passed by this Court has been willfully violated and not otherwise. If the petition for vacating the interim order had been filed before issuing the notice of demand, this Court would not have even entertained the contempt petition. It is a settled practice of this Court that when a vacate stay petition is pending, the contempt petition is not taken up for disposal. But in the case on hand, the vacate stay petition was filed only after the contempt petition was filed. That is why, I took up the contempt petition for final disposal.

7. The petitioner is an income tax assessee. The case on hand pertains to the assessment year 2015-16. He was issued with an assessment order. He filed an appeal. The appeal was partly allowed. The order of the appellate authority was sought to be given effect to by passing the order dated 29.11.2018. That was put to challenge and I granted interim stay of the same. Thereafter, the assessing authority had filed an appeal against the order of the appellate authority before the Income Tax Appellate Tribunal. It is true that if the said appeal filed by the assessing authority is allowed, the writ petition itself may become infructuous. It is also alleged that in the condone delay petition filed before the Tribunal, subsequent developments have not been set out. In my view, that will in no way amount to contempt of the interim order passed by this Court. It is for the petitioner to canvas his contentions before the Tribunal and I fail to understand as to how filing of a statutory appeal before the Tribunal will constitute violation of the order passed by this



Court. The statutory right available to the assessing authority cannot be stifled by holding out the threat of contempt. When the petition filed by the petitioner is taken up for final disposal, it will be decided based on the legal and factual position then obtaining. Hence, I do not find any merit in the first contention urged by the learned Senior counsel appearing for the petitioner.

8. Likewise, the dismissal of the rectification petition filed by the assessee by holding that a particular provision is applicable would not also constitute contempt. This is for two reasons. The interim order passed by this Court is in respect of the assessment years 2013-14, 2014-15 and 2015-16. The rectification petitions are in respect of the assessment years 2016-17 and 2017-18. The rectification petitions do not relate to the subject matter of the writ petition pending before this Court. Of course, there is a overlapping in the sense that the issue raised in the writ petition and the issue raised in the rectification petitions are one and the same. But the writ petition is yet to be disposed of. The stand of the authority is that a particular statutory provision is applicable. There is contest between the petitioner and the assessing authority as regards the applicability of a particular provision. When the issue is yet to be decided, the authority can very well take a stand in the meanwhile. Grant of interim order of stay will not amount to handing out a final decision on the particular issue. This Court had taken only a prima facie view and passed an interim order of stay. That will not tie the hands of the authority in reiterating their stand in the rectification proceedings.

9. The respondent/contemnor filed a detailed affidavit justifying the issuance of notice of demand. The learned standing counsel took me through the order passed by the appellate authority. Even while granting 100% deduction under Section 80-1B (11C) of the Act, the appellate authority had given a finding that the petitioner had accepted an undisclosed income to the tune of Rs.12,62,28,580/- at the time of search. The net income of the assessee was Rs.12,63,63,600/- and he had also offered to pay tax for the same. The penalty to the tune of 10% on the said undisclosed income works out to Rs.1,26,36,360/- under clause (a) of sub-section (1) of Section 271AAB. The contemnor in her affidavit had given the justification as follows :

"4. I respectfully submit that the petitioner had filed an appeal before Commissioner of Income Tax (Appeals) against the original assessment order. The CIT (Appeals) has partly allowed the appeal and granted 100% deductions under section 80-1B(11C). However in the appellate order the CIT (Appeals) had given a finding that the petitioner has accepted Rs.12,62,28,580/- (Rs.12,42,12,500/- admitted at the time of search) in



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paragraph 4.5 at page 35 of the typed set. In paragraph 4.6.3 at page 40 the CIT (Appeals) has concluded that the assessee has shown the net income of Rs.12,63,63,600/- as taxable income in the return filed and offered to pay tax for the same. For the amount of Rs.12,63,63,600/- the penalty u/s 271AAB(1) of Income Tax Act is leviable. The penalty being 10% of undisclosed income works out to Rs.1,26,36,360/- (10% of Rs. 12,63,63,600/-) under clause (a) of sub section (1) of section 271AAB.

5.I respectfully submit that the CIT (Appeals) had partly allowed the appeal as far as the addition of IP collection. In the original assessment Rs.26,52,747/- was added which is based on difference in collection as on 20.08.2014. The CIT (Appeals) has granted a relief of Rs.2,49,410/- and confirmed the addition of Rs.24,03,337/-, thereby partly allowed the claim of the assessee. For the amount Rs.24,03,337/- the Section states that penalty could be levied from 30% to 90% and the revenue has imposed 30%. The amount of Rs.7,21,000/- is 30% of Rs.24,03,337/-) under clause (c) of sub section (1) of section 271AAB.

6.I respectfully submit that if the amount Rs.1,26,36,360/- and Rs.7,21,000/- are added the amount is Rs.1,33,57,360/- and for this amount only the demand notice under Section 156 dated 23.03.2020 was issued. In fact this notice was issued along with the order passed imposing penalty and in the order these details are stated. However the assessee has not enclosed the copy of the order in the typed set but has enclosed only the demand notice. Now the same is enclosed in the typed set of papers.

7.I respectfully submit that at the cost of repetition the CIT (Appeals) has allowed in entirety the deduction (i.e. 100% deduction) claimed under section 80-1B(11C) and to give effect the revised assessment order was passed. But as far as the unaccounted receipts are concerned the assessee himself has admitted Rs.12,63,63,600/- in his "return of income" itself and has offered to pay tax, for this only the penalty of 10% of Rs.12,63,63,600/- is imposed to the tune of Rs.1,26,36,360/-. As far as the difference of IP collection is concerned, Rs.26,52,747/- was confirmed in original assessment order, the CIT (Appeals) has granted a relief of Rs.2,49,410/- and confirmed the balance amount of Rs.24,03,337/-. The penalty of 30% of Rs.24,03,337/- was imposed to the tune of Rs.7,21,000/-. Adding both the penalty Rs.1,33,57,360/- was imposed vide the order-cum-demand notice dated 23.03.2020 was issued."



10.I am therefore satisfied that the issuance of notice of demand on 23.03.2020 has nothing to do with the interim order granted by this Court. There is no violation of the order passed by this Court, let alone willful violation. The contemnor is discharged. I however make it clear that it is open to the petitioner herein to independently challenge the said notice of demand dated 23.03.2020 in the manner known to law. The order closing the contempt petition will not be put against the petitioner.

11.With this observation and liberty to the petitioner, this contempt petition stands closed.

Sd/-

Assistant Registrar (Records)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

skm

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
The Assistant Commissioner of Income Tax,
Central Circle-I, Madurai - I,
Kulamangalam Main Road,
Madurai - 625 002.

+3 CC to M/s.S.RAMESH, Advocate (SR-31145[F] dated 05/10/2021)

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WMP (MD) No.82 of 2019

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WP (MD) No.109 of 2019

04.10.2021

MGJ(21.10.2021) 6P 5C