IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.02.2022

CORAM :

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

W.P.No.4230 of 2022
and
W.M.P.Nos.4375 & 4376 of 2022

M/s.Srivari Agencies
Represented by its Managing Partner
M.Sivaram, S/o.Murugesan
No.17, Brindavanam Street,
West Mambalam
Chennai - 600 035. ...Petitioner

Vs.

1.The Income Tax Officer,
Non Corporate Ward 19(4),
No.121, Mahatma Gandhi Road,
Nungambakkam, Chennai - 600 034.

2.The Commissioner of Income Tax (Appeals)-12,
No.46, Mahatma Gandhi Road,
Chennai - 600 034.

3.The Branch Manager,
Standard Chartered Bank
Sagas Amar Court 59
G.N. Chetty Road, T.Nagar,
Chennai - 600 017. ...Respondents

Prayer : Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari calling for the records in DIN & Notice No.:ITBA/RCV/S/226(3)_1/2021-22/1039560778(1) dated 09.02.2022 on the file of the 1st respondent issued to the 3rd respondent relating to the Assessment Year 2017-18 and quash the same.

For Petitioner : Mr.Hari Radhakrishnan for Mr.J.Lenin

For Respondents : Mrs.Hema Muralikrishnan Senior Standing Counsel

ORDER

The prayer sought for herein is for a writ of certiorari calling for the records in DIN & Notice No.:ITBA/RCV/S/226(3)_1/2021-22/ 1039560778(1) dated 09.02.2022 on the file of the 1st respondent issued to the 3rd respondent relating to the Assessment Year 2017-18 and quash the same.

2. For assessment year 2017-18, assessment was over and assessment order was passed under Section 143(2) of the Income Tax Act, 1961 (in short 'the Act') on 23.12.2019. Aggrieved over the same, the petitioner/assessee filed appeal before CIT (Appeals) on 22.01.2020, where, according to Mr.Hari Radhakrishnan, learned counsel for the petitioner, two hearings the matter were heard and the Appellate Authority directed the petitioner/assessee to file the written submissions, that was also submitted. Therefore, the case, according the learned counsel for the petitioner, is ripe for disposal.

3. In the meanwhile, the notice under Section 226(3) of the Act dated 09.02.2022 has been issued by the Assessing Authority to the Banker of the petitioner viz., the Standard Chartered Bank, T.Nagar to freeze the bank account of the petitioner. Aggrieved over the same, the present writ petition has been filed.

4. Mr.Hari Radhakrishnan, learned counsel appearing for the petitioner would also canvass the point that, even though, subsequently, the petitioner had filed an application under Section 220(6) of the Act on 14.02.2022, the same is yet to be disposed of, therefore, direction may be given to the respondent/Assessing Authority to decide the said application seeking for stay under Section 220(6) of the Act, before which, let the notice issued, which is impugned hereunder, under Section 226(3) of the Act can be kept aside or set aside with a direction to the respondent to lift the attachment made against the bank account of the petitioner.

5. However, Mrs.Hema Muralikrishnan, learned Senior Standing Counsel, who accepts notice, would submit that, the petitioner from 2019 onwards, though filed an appeal before the Appellate Authority in January 2020, has not chosen to file any application under Section 220(6) of the Act. Now only just a week before or a fortnight, he has come forward to file this application on 14.02.2022, therefore, at the earliest, the same would be decided on merits by the Assessing Authority.

6. Nevertheless insofar as the notice issued under Section 226(3) of the Act is concerned, i.e., impugned herein, there can be no impediment for the Assessing Authority to proceed under

the said notice. Therefore, it does not require any interference from this Court, because, absolutely there is no stay granted by the Appellate Authority against the due payable by the petitioner, only the petitioner has not chosen to file any application seeking for any stay within the meaning of Section 220(6) of the Act, therefore, the learned Standing Counsel seeks dismissal of this writ petition.

7. I have considered the rival submissions made by the learned counsel for both sides and have perused the materials placed before this Court.

8. As has been rightly pointed out by the learned Standing Counsel appearing for the respondent Revenue, the petitioner admittedly has chosen to file the application under Section 220 (6) of the Act only on 14.02.2022, before which, on 09.02.2022 this notice under Section 226(3) of the Act was issued. Therefore, considering these factual matrix, where, the appeal has been filed and it is pending for nearly two years and more, where, according to the learned counsel for the petitioner, the arguments were heard, at this juncture, the Assessing Authority can very well consider the application submitted by the petitioner dated 14.02.2022 made under Section 220(6) of the Act for making any interim arrangement and in that view of the matter, this Court is inclined to dispose of this writ petition with the following orders:

(i) That there shall be a direction to the respondent Assessing Authority to consider and pass orders on the application dated 14.02.2022 filed by the petitioner under Section 220(6) of the Act and decide the same on merits and in accordance with law within a period of one week from the date of receipt of a copy of this order.

(ii) It is needless to mention that, depending upon the outcome of the orders to be passed in the stay application by the Assessing Authority, the further course of action pursuant to the impugned notice dated 09.02.2022 can also be decided and proceeded accordingly.

9. With this direction, this Writ Petition is disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS-VII)

// True Copy //

Sub Assistant Registrar

Sgl

To

1.The Income Tax Officer,
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2.The Commissioner of Income Tax (Appeals)-12,
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3.The Branch Manager,
Standard Chartered Bank
Sagas Amar Court 59
G.N. Chetty Road, T.Nagar,
Chennai - 600 017.

+1cc to M/s.Hema Muralikrishnan, Advocate Sr.No.13242

+1cc to Mr.Lenin, Advocate Sr.No.13604

W.P.No.4230 of 2022

MG(CO)
RVM(03/03/2022)