IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.03.2022

CORAM:

THE HON'BLE MR.JUSTICE R.SURESH KUMAR

Writ Petition No.4636 of 2022
and
WMP.No.4758 of 2022

Sudharsan ..Petitioner

Vs

1.The Income Tax Officer
Non Corporate Ward 19(5)
Room No.612, 6th floor,
Ayakar Bhavan Annexe block
121, M.G.Road, Nungambakkam
Chennai-600 034

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

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

4.The Branch Manager
Karur Vysya Bank
No.22, A, 7th Avenue
Ashok Nagar
Chennai-600 083

5.The Branch Manager
Karur Vysys Bank
D.No.9, Guindy
Plot No.777, Munusamy Salai
Near Pondicherry Guest House
K.K.Nagar
Chennai-600 078 ..Respondents

Prayer : Petition filed under Article 226 of the Constitution of India, praying to issue a writ of certiorari calling for records in DIN & Notice No.ITBA/RCV/S/226(3)-1/2021-22/1039758674(1) dated 15.02.2022 on the file of the 2nd respondent issued to the 4th respondent relating to the assessment year 2017-18 and quash the same.

For Petitioner : Mr.Hari Radhakrishnan

For Respondents : Mr.D.Prabhu Mukunth Arunkumar,
Junior Standing Counsel for R1 to R3.

ORDER

The prayer sought for herein is for a writ of certiorari calling for records in DIN & Notice No.ITBA/RCV/S/226(3)-1/2021-22/1039758674(1) dated 15.02.2022 on the file of the 2nd respondent issued to the 4th respondent relating to the assessment year 2017-18 and quash the same.

2. In respect of Assessment year 2017-18, there has been assessment against the petitioner as against which appeal has been filed which is pending. Pursuant to which, the Bank account of the petitioner has been attached and a notice to that effect was issued under Section 226(3) of the Income Tax Act (in short "Act"), on 15.02.2022, which is challenged in this writ petition.

3. The learned counsel appearing for the petitioner would submit that pursuant to the impugned notice, the bank account of the petitioner has been attached, out of which a sum of Rs.34 lakhs has already been recovered by way of appropriation or withdrawal from the bank in favour of the Income Tax Department that itself is more than 20% of the total demand for the assessment year concerned.

4. He would also submit that, subsequently, the petitioner made an application on 17.02.2022 to the 2nd respondent/assessing authority under Section 220(6) of the Act for consideration of grant of stay for the demand. The said application also has not been considered. Therefore, the plea of the petitioner counsel is that, let there be a direction to the 2nd respondent to consider the said application dated 17.02.2022 and while considering the same, recovery of a sum of Rs.34 lakhs, which is more than 20% of the total demand can be taken into account and accordingly an order to that effect for grant of stay can be passed.

5. However Mr.D.Prabhu Mukunth Arunkumar, learned Junior Standing counsel appearing for the respondents 1 to 3 would submit that insofar as the plea raised by the learned counsel for the petitioner to consider the application dated 17.2.20022 filed under Section 220(6) of the Act is concerned, that would be considered on its own merits and decided within a time frame that may be stipulated by this court.

6. However, with regard to the condition to be imposed, if ultimately, the 2nd respondent/assessing authority come forward to stay the demand that is purely the discretion of the assessing authority depending upon the case where so many

factors would be taken into account including the recovery of Rs.34 lakhs which is already recovered from the bank account of the petitioner.

7. I have considered the said rival submissions made by the learned counsel appearing for the parties and have perused the materials placed before this court.

8. Though the notice to bank attachment issued under Section 226(3) of the Act dated 15.02.2022 is under challenge, in view of the aforesaid stand taken by the petitioner, through his counsel as discussed above, this court having considered the said aspect, is inclined to dispose of this writ petition with the following orders:-

(i) that there shall be a direction to the respondents/assessing authority to consider the application dated 17.02.2022 of the petitioner submitted under Section 226 (3) of the Act on merits and in accordance with law within a period of six weeks from the date of receipt of a copy of this order and decide the same.

(ii) while considering the said application, the assessing authority/respondents shall take into account the recovery of a sum of Rs.34 lakhs, already been made pursuant to the attachment of the Bank Account of the petitioner and whether that recovery itself is enough to satisfy the 20% deposit as a pre condition to be normally imposed in considering the stay application, can also be taken into account by the respondent/assessing authority while disposing the said application.

(iii) It is needless to mention that, once a decision is taken on the application of the petitioner filed under Section 220(6) of the Act, the further course of action with regard to lifting the attachment made against the petitioner in respect of the bank account, would be decided accordingly.

9. With these observations, the writ petition is disposed of. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CO)

//True Copy//

Sub Assistant Registrar

nvsri

To

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W.P.No.4636 of 2022

KV(CO)
GN(03/03/2022)