IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.04.2022

CORAM :

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

**Writ Petition Nos.9484, 9489, 9490 and 9495 of 2022
and W.M.P.Nos.9228, 9229, 9240, 9241, 9242,
9244, 9248 and 9249 of 2022**

W.P.No.9484 of 2022

Premkumar Goverthanan …. Petitioner

-Vs-

1. The Principal Commissioner of Income Tax-VI,
   Non-Corp, Ward-15,
   No.121, Mahatma Gandhi Road,
   Nungambakkam, Chennai - 600 034.

2. The Income Tax Officer
   Non-Corp, Ward-15,
   No.121, Mahatma Gandhi Road,
   Nungambakkam, Chennai - 600 034.

3. The Branch Manager
   Axis Bank Limited,
   Indira Nagar Branch,
   No.42, Old No.70, 1st Avenue,
   Indira Nagar, Adyar,
   Chennai - 600 020. …. Respondents

Prayer : Writ Petition under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari, calling for the records pertaining to the impugned notice, dated 24.02.2022 bearing DIN & Notice No. ITBA/COM/F/17/2021-22/1040089114(1) issued by the second respondent and quash the same.

W.P.No.9489 of 2022

Premkumar Goverthanan .... Petitioner

-Vs-

1. The Principal Commissioner of Income Tax-VI,
Non-Corp, Ward-15,
No.121, Mahatma Gandhi Road,
Nungambakkam, Chennai - 600 034.

2. The Income Tax Officer
Non-Corp, Ward-15,
No.121, Mahatma Gandhi Road,
Nungambakkam, Chennai - 600 034.

3. The Branch Manager
Axis Bank Limited,
Airoli Branch,
4th Floor, Gigaplex West, Airoli,
Navi Mumbai, Maharashtra - 400 708. .... Respondents

Prayer : Writ Petition under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari, calling for the records pertaining to the impugned notice, dated 24.02.2022 bearing DIN & Notice No. ITBA/COM/F/17/2021-22/1040089637(1) issued by the second respondent and quash the same.

W.P.No.9490 of 2022

Premkumar Goverthanan …. Petitioner

-Vs-

1. The Principal Commissioner of Income Tax-VI,
   Non-Corp, Ward-15,
   No.121, Mahatma Gandhi Road,
   Nungambakkam, Chennai - 600 034.

2. The Income Tax Officer
   Non-Corp, Ward-15,
   No.121, Mahatma Gandhi Road,
   Nungambakkam, Chennai - 600 034.

3. The Branch Manager
   Punjab National Bank,
   Neelangarai Branch, Manju Complex,
   No.14, East Coast Road, Neelangarai,
   Chennai - 600 041. …. Respondents

Prayer : Writ Petition under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari, calling for the records pertaining to the impugned notice, dated 24.02.2022 bearing DIN & Notice No. ITBA/COM/F/17/2021-22/1040089928(1) issued by the second respondent and quash the same.

W.P.No.9495 of 2022

Premkumar Goverthanan …. Petitioner

-Vs-

1. The Principal Commissioner of Income Tax-VI,
   Non-Corp, Ward-15,
   No.121, Mahatma Gandhi Road,
   Nungambakkam, Chennai - 600 034.

2. The Income Tax Officer
   Non-Corp, Ward-15,
   No.121, Mahatma Gandhi Road,
   Nungambakkam, Chennai - 600 034.

3. The Branch Manager
   YES Bank,
   Besant Nagar Branch,
   Ground Floor, Sri Kumaran Illam,
   15A, 6th Avenue, Besant Nagar,
   Chennai - 600 090. .... Respondents

Prayer : Writ Petition under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari, calling for the records pertaining to the impugned notice, dated 24.02.2022 bearing DIN & Notice No. ITBA/COM/F/17/2021-22/1040090330(1) issued by the second respondent and quash the same.

For Petitioner : Mr.L.Gokulraj
in all the writ petitions

For Respondents : Mrs.Hema Muralikrishnan for R1 and R2
in all the writ petitions

COMMON ORDER

Since the issue raised in all these writ petitions is common, with the consent of the learned counsel appearing for the parties, all these writ petitions were heard together and are being disposed of by this common order.

2. That the petitioner is an assessee under the respondent within the meaning of the provisions of the Income Tax Act, 1961 (in short "the Act"). In respect of the Assessment Year 2017-18, assessment had been made. As against the assessment order, since the petitioner aggrieved, preferred appeal before the Commissioner Appeal, which is still pending before the Commissioner Appeal.

3. In the meanwhile, in order to prevent the recovery proceedings to be initiated in this regard by the Assessing Authority, the petitioner assessee has filed a stay petition under Section 220(6) of the Act. The said application was decided and disposed of by the Assessing Authority, vide order, dated 13.03.2020, under which a conditional stay was granted. The condition being that, 20% of the disputed demand, which comes to Rs.2,29,58,028/- shall be paid or deposited by the petitioner in two installments on or before 17.03.2020 and 24.03.2020 respectively. If the said condition is not complied with, the stay granted by the Assessing Authority shall automatically be withdrawn.

4. The said condition imposed against the petitioner for grant of stay, since could not be complied with, the petitioner aggrieved over the said condition imposed seems to have filed a representation or application before the Principal

Commissioner on 21.01.2020. Though such a request or application had been filed before the Principal Commissioner, the same, according to Mr.L.Gokulraj, learned counsel appearing for the petitioner is still pending which is yet to be decided.

5. In the meanwhile, the Revenue has proceeded to recover the dues, therefore, proceedings under Section 226 of the Act has been issued on 24.02.2022 to four Banks, where the petitioner is having account, to attach the respective Bank accounts of the petitioner assessee. Those orders or proceedings issued under Section 226 of the Act are impugned herein in these writ petitions.

6. Heard Mr.L.Gokulraj, learned counsel appearing for the petitioner who would submit that, unless the application submitted by the petitioner before the Principal Commissioner as against the order of conditional stay granted by the Assessing Authority is decided, the Revenue cannot proceed to recover the alleged dues and therefore he seeks indulgence of this Court against these orders issued under Section 226 of the Act to the Bank Authorities to attach the accounts of the petitioner.

7. However, Mrs.Hema Muralikrishnan, learned standing counsel appearing for the respondents Revenue would contend that, as against the conditional order of stay passed by the Assessing Authority, dated 13.03.2020, since there could be no appeal filed, a Revision could have been filed under Section 264(5) of the Act, however, no such application for revision has been filed by the Assessee.

8. To the claim made by Assessee side that, the application, dated 21.01.2020 made before the Principal Commissioner shall be treated as application for revision under Section 264 of the Act, the learned standing counsel would submit that, such an application cannot be filed or entertained by the Principal Commissioner unless and until it is filed in the manner prescribed in Section 264 especially sub-section (5) of Section 264 of the Act. Therefore if at all the petitioner wants to file a revision application before the Principal Commissioner within the meaning of Section 264(5) of the Act, it is open to him to make such an application and once he makes an application, it is for the Principal Commissioner to take a decision thereof on merits and in accordance with law.

9. Therefore, as on date, since the conditional stay granted by the Assessing Authority has not been complied with, there could be no further impediment for the revenue to proceed against the petitioner for recovering the dues, therefore, the impugned proceedings issued to attach the bank accounts of the petitioner are tenable. Hence, those impugned orders do not require any interference from this court, she contended.

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

11. No doubt the conditional stay order granted by the Assessing Authority, dated 13.03.2020 has not been complied with by the petitioner. The reason being that, according to the learned counsel appearing for the petitioner, it is a onerous condition.

12. If that being so, if at all the petitioner assessee is aggrieved over such a onerous condition imposed by the Assessing Authority, he could have filed a revision before the Principal Commissioner as contemplated under Section 264 of the Act. However, the application said to have been submitted before the Principal

Commissioner, dated 21.01.2020, admittedly not filed under Section 264(5) of the Act, as the filing fee of Rs.500/- which has been prescribed in the Act itself admittedly not been paid by the petitioner assessee.

13. Therefore the Principal Commissioner is not obliged to entertain such an application filed without a processing fee and therefore, whatever application submitted on 21.01.2020 is a mere representation or request, therefore statutorily there is no binding effect on such an application to dispose it on merits within a time frame as contemplated under sub section (5) of Section 264.

14. In that view of the matter, as rightly pointed out by the learned Standing counsel appearing for the Revenue, there could be no impediment for the Revenue to proceed against the petitioner for recovery of the amount and that is the reason why the impugned orders addressing to the Bank to attach the bank accounts of the petitioner have been issued. Therefore on merits, this Court feels that, the impugned orders cannot be successfully assailed by the petitioner, for the reason projected before this Court on the side of the assessee.

15. However, since the revision provision, i.e., 264(5) enables any aggrieved assessee to file petition for revision against any order, for which no appeal has been provided under the Act, such application can very well be filed even now by the petitioner in the manner known to law, especially in the context of Section 264(5) of the Act by paying the necessary fee.

16. If such application is filed, that can be taken up and decided on priority basis by the Principal Commissioner, on merits and till such time, some breathing time can be given to the petitioner before executing the impugned order.

17. In view of the aforestated facts and circumstances, this Court is inclined to dispose of these writ petitions with the following order :

> (i) That the petitioner can file an application for revision under Section 264(5) of the Act within a period of one week from the date of receipt of a copy of this order in the prescribed format, if any, along with necessary fee prescribed in this regard to the Principal Commissioner concerned, with necessary documents and annexures.
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> (ii) Once such application for revision is filed, the same shall be entertained and after giving opportunity of being heard to both Assessee as well as the Revenue, it shall be decided and

disposed of, on merits and in accordance with law, within a period of 30 days thereafter.

(iii) Till such time, the impugned orders shall be kept in abeyance.

(iv) It is made clear that, once a decision is taken by the Principal Commissioner in the Revision application to be submitted by the petitioner as indicated above, it is open to the Revenue to act upon either to give execution of the impugned orders or to drop the same depending upon the outcome of the decision to be taken by the Principal Commissioner.

18. With these directions and observations, all these writ petitions are disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

21.04.2022

Index : Yes/No
Speaking order / Non-speaking order

tsvn

To

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   Non-Corp, Ward-15,
   No.121, Mahatma Gandhi Road,
   Nungambakkam,
   Chennai - 600 034.

2. The Income Tax Officer
   Non-Corp, Ward-15,
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R. SURESH KUMAR, J.

tsvn

W.P.Nos.9484, 9489, 9490 and 9495 of 2022

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