IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.03.2019

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THE HONOURABLE **Dr.JUSTICE ANITA SUMANTH**

WP. No.7681 of 2017
and
WMP. No.8312 of 2019

M/s.Pavai Varam Educational Trust,
No.64-C Rotary Nagar,
Rasipuram – 637 408
PAN No.AAATP6024D ... Petitioner

Vs.

1.The Assistant Commissioner of
Income Tax, Central Circle,
Salem – 636 007.
2.The Commissioner of Income Tax
(Appeals) -19,
121, Mahatma Gandhi Road,
Nungambakkam,
Chennai – 600 034.
3.The Manager,
Corporation Bank,
No.14, Paramathy Road,
Namakkal – 637 001. ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying for a Writ of Certiorarified Mandamus to call for the records of the 1st respondent in PAN No.AAATP60224D and quash the Impugned Notice u/s.226(3) No.NIL dated 07.03.2019 and direct the 1st respondent to release the attachment of the 13 bank accounts with the 3rd Respondent and consequential injunction from recovery of the tax pending disposal of the appeal and stay petition filed before the 2nd respondent in ITA NO.128/18-19.

For Petitioner : Ms.Pushya Sitaraman, Senior Counsel for Ms.G.Vardini Karthik,

For Respondents : Mr.A.P.Srinivas, Senior Standing Counsel

ORDER

Mr.A.P.Srinivas, learned Senior Standing Counsel takes notice for the respondents.

2. By consent expressed by both Ms.Pushya Sitaraman, learned Senior Counsel for Ms.G.Vardini Karthik, learned Counsel for the petitioner and Mr.A.P.Srinivas, learned Senior Standing Counsel for the respondents, this Writ Petition is disposed of finally at the stage of admission.

3. The challenge in this Writ Petition is to the order of the 1st respondent dated 07.03.2019 and consequent coercive recovery proceedings by the Income Tax Department by attachment of eleven (11) bank accounts held by the petitioner group of Institutions as well as all Fixed Deposits maintained by the Institutions in the Corporation Bank, Paramathy Road, Namakkal. The coercive recovery is consequent upon a demand of a sum of Rs.32,59,94,019/- arising from order of assessment for Assessment Year 2017-18.

4. The petitioner has challenged the aforesaid order of assessment by way of first appeal before the Commissioner of Income Tax

(Appeals) (in short 'CIT (A)') on 22.01.2019. *Inter alia,* the petitioner has specifically raised grounds in regard to the addition of a sum of Rs.15,00,00,000/- that had been declared by the petitioner before the Director of Income Tax under and in terms of the Prime Minister Garib Kalyan Yojana Scheme (PMGKY) Scheme. This addition according to the petitioner, amounts to double taxation. In all, the petitioner, contends that assessment is high pitched and flawed, both on facts and in law.

4. Be that as it may, the petitioner has also filed an application for stay of demand before the CIT (A) on 22.01.2019. The stay petition is, admittedly, pending as on date.

5. In the meanwhile, the assessing authority, arrayed as the first respondent, has issued a letter dated 12.02.2019 to the petitioner stating as follows:

> *'Sub: Collection of tax demand- in the case of M/s.Pavai Varam Educational Trust – Ay 2017-18.*
>
> *The order u/s.143(3) of I.T.Act for the AY 2017-18 was passed on 29.12.2018 and the demand amounting to Rs.32,59,94,019/- was raised. The assessment order u/s.143(3) and the demand notice u/s.156 of I.T. Act was served on the assessee on 31.12.2018.*
>
> *The assessee has filed the appeal before the Principal Commissioner of Income tax (Appeals)-18, Chennai on 12.01.2019 against the order u/s.143(3) dated 29.12.2018 for the AY 2017-18.*

6. As per the provisions of section 220(6) of Income Tax Act and as per the modified CBDT guidelines in F.No.404/72/93-ITCC dated 31.07.2017, th 20% on the total tax demand amounting to Rs.6,51,98,804/- should be paid. In this regard, you are requested to pay the amount of Rs6,51,98,804/- (20% on total tax demand) on or before 15.02.2019 and to produce the necessary evidences to the undersigned. Failing which, the coercive steps will be initiated to collect the tax arrears demand.'

6. The aforesaid communication has been issued by the first respondent even during the pendency of the application for stay before the CIT (A). The petitioner immediately brought to the notice of the first respondent, the fact that the application for stay filed by the petitioner was pending before the CIT (A), an authority superior to the assessing officer and requested him to keep the collection of demand in abeyance till the disposal of the said application. The request of the petitioner is as follows:

'In connection with above proceedings following is submitted.

1.By your above notice the assessee hs been asked to pay a sum of Rs.6,51,98,804/- (20% on the total tax demand).

2.In respect of the demand of Rs.32,59,94,019/- for the above assessment year the assessee has filed a stay petition dated 21.01.2019 with CIT(A) – 19. Cennai on 22.01.2019. A copy of the above stay petition was also filed with your goodselves on 29.01.2019.

3.In view of the pendency of the above stay petition it is requested the collection of the

> *above demand may be stayed till the disposal of the above petition. '*

7. It is in the aforesaid circumstances that the assessing authority has issued the impugned orders of attachment dated 07.03.2019 to the Manager Corporation Bank attaching all eleven (11) Bank accounts as well as Fixed Deposits held by petitioner in the third respondent Bank.

8. I am of the view that the impugned recovery action is premature, apart from being mechanical and without any application of mind. The petitioner has approached the CIT(A), an authority empowered to consider and adjudicate upon the request for stay, (see ***Paulsons Litho Works vs Income-Tax Officer And Others [208 ITR 676]***) as early as on 22.01.2019, which is within thirty (30) days from the date of order of assessment. This fact has also been brought to the notice of the respondents. It was thus, incumbent upon the respondent to have awaited adjudication by the CIT (A) upon the request for stay made by the petitioner.

9. In the light of the discussion as aforesaid, the impugned order is set aside and the assessing authority is directed to lift attachments in the bank forthwith. It is brought to my notice by the learned standing counsel that a sum of Rs.16,00,000/- (approx) has been appropriated from the accounts. The same shall be retained by the department and adjusted against the disputed demands.

11. The Writ Petition is disposed in the following terms:

i) The petitioner will appear before the Commissioner of Income Tax (Appeals), the 2nd respondent herein, on **25.03.2019 at 10.30 a.m**.

ii) After hearing the petitioner, the Commissioner of Income Tax (Appeals) shall pass appropriate orders upon the application for stay bearing in mind existence of a *prima facie* case, financial stringency and the balance of convenience in the matter, within a period of two (2) weeks from the date of conclusion of the personal hearing i.e. on or before 08.04.2019.

iii) Status quo, as on today, shall be maintained till 08.04.2019 with regard to recovery.

Miscellaneous Petition is closed with no order as to costs.

15.03.2019

Index:yes/No
Internet:Yes
Speaking / Non-Speaking Order
rkp

Note: Issue order copy on 20.03.2019.

To:

1.The Assistant Commissioner of
Income Tax, Central Circle,
Salem – 636 007.
2.The Commissioner of Income Tax
(Appeals) -19,
121, Mahatma Gandhi Road,
Nungambakkam,
Chennai – 600 034.

Dr.ANITA SUMANTH.J.,

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