IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.12.2022

CORAM

THE HON'BLE Mr.JUSTICE **M.SUNDAR**

W.P.No.31729 of 2022
and
WMP.Nos.31176, 31179 & 31182 of 2022
in
W.P.No.31729 of 2022

Dr.C.Vijayabaskar

... Petitioner

-Vs.-

1. The Tax Recovery Officer,
   TRO Central-2,
   Room No.119, 1st Floor,
   Investigation Building,
   No.46 (Old No.108), Mahatma Gandhi Road,
   Chennai-600 034.

2. The Deputy Commissioner of Income Tax,
   Central Circle-2(1)
   Investigation Wing,
   New No.46, M.G.Road, Chennai-600 034.

3. The Commissioner of Income Tax (Appeals),
   1st Floor, Central Circle,
   Near ICICI Bank,
   Nungambakkam, Chennai-600 034.
   (R3 *Suo-motu* impleaded vide this order)

... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, to call for the records on the file of the 1st respondent and to quash the order of attachment of immovable properties (Schedule mentioned hereunder) in ITBA/COM/F/17/2022-23/1046416836(1) dated 20.10.2022 under Rule 48 of the Second Schedule to the Income Tax, 1961, and the notices dated 29.9.2022 u/s.226(3) of income Tax Act, 1961 in ITBA/COM/F/17/2022-23/1046104137(1) ITBA/COM/F/17/2022-23/1046104356(1), ITBA/COM/F/17/2022-23/1046104032(1) ITBA/COM/F/17/2022-23/1046104264(1) and quash the same as untenable in law unreasonable, illegal, wholly without jurisdiction and further communicate the order to the jurisdictional SRO and consequently FORBEAR the 2nd respondent from initiating any further steps for alleged recovery of tax demand till such time the IBS-2, New Delhi disposes of the petitioner's application in Settlement Application No.TN/CN52/2021-22/10/it and to pass such other order or orders as this Hon'ble Court may deem fit in the facts and circumstances of the case.

For Petitioner : Mr.Nithyaesh Natraj,
and Mr.Vaibhav R.Venkatesh
along with Mr.Anirudh A.Sriram

For Respondents : Mr.A.P.Srinivas,
Senior Standing counsel (Income Tax)
along with Ms.S.Premalatha,
Junior standing counsel

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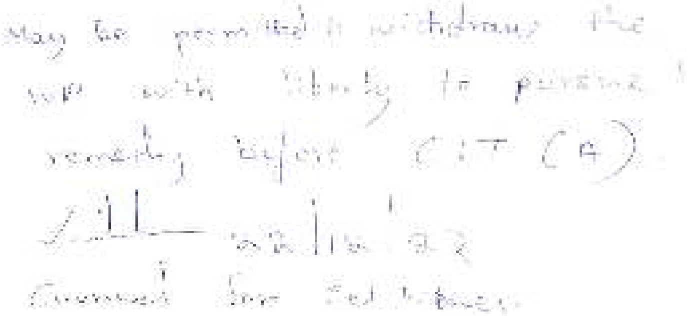
ORDER

Mr.Nithyaesh Natraj and Mr.Vaibhav R.Venkatesh along with Mr.Anirudh A.Sriram, learned counsel for the writ petitioner and Mr.A.P.Srinivas, learned senior standing counsel (Income Tax) along with Ms.S.Premalatha, learned junior standing counsel for both the respondents are before this Court.

2. Learned counsel for writ petitioner seeks leave to withdraw the captioned matter so as to pursue the writ petitioner's appeal before the 'CIT (Appeals)' [hereinafter 'Appellate Authority' for the sake of convenience]. To be noted, learned counsel on record for writ petitioner submits that writ petitioner has filed an affidavit. Learned counsel has made an endorsement in the case file and a scanned reproduction of the same is as follows:


May be permitted to withdraw the
WP with liberty to pursue
remedy before CIT (A).
28/11/22
Counsel for Petitioner.

3. However, learned Revenue counsel flags certain issues qua aforementioned withdrawal plea of writ petitioner. Therefore, while permitting the writ petitioner to withdraw pursuant to writ petitioner's affidavit dated 30.11.2022, it has become necessary to qualify the same with certain observations.

4. Factual matrix has been captured by Hon'ble predecessor Judge in proceedings made in the listing dated 28.11.2022 and a scanned reproduction of the same is as follows:

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[illegible] learned counsel on behalf of Mr.A.P.S[illegible], learned Senior Standing Counsel [illegible] the respondents [illegible] time to obtain instructions and file a counter.

2. The hearing that transpired today is captured below:

The petitioner challenges recovery [illegible] under the provisions of the Income Tax Act, 1961 pending an Appeal that is stated to have been filed on [illegible].09.2021 before the Interim Board of the Settlement Commission. However, prima facie, the application does not appear to be maintainable for multiple reasons:

i) This is the third application that the petitioner has filed, two of which have been rejected earlier.

ii) Reliance on Notification No.F.No.[illegible]/2021-[illegible] dated 28.09.2021 does not come to the petitioner's rescue as reference to 'pending application' therein concerns application that is valid whereas, in my prima facie view, the present application of the petitioner dated 27.09.2021 is invalid.

iii) Orders of assessment have been passed pursuant to the dismissal of the earlier settlement applications filed and the petitioner has challenged the same by way of statutory appeals.

3. Faced with the admitted position as above, learned counsel for the petitioner states, on instructions, that the petitioner does not wish to pursue the Writ Petition and would instead, rest content with a direction being issued to

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the Appellate Commissioner for expeditious disposal of the pending appeals. He seeks some time to file an affidavit and is granted time till 01.12.2022.

4. List on 01.12.2022. Affidavit by then with an advance copy served upon the respondents.

SL

28.11.2022

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5. Learned Revenue counsel brings to the notice of this Court two issues and they are as follows:

(1) Pending application before Settlement Commission (in this case Interim Board of Settlement Commission) the Appellate Authority cannot hear the appeal and therefore, 27.09.2021 application of writ petitioner has to be given a quietus. In this regard, the averment of writ affidavit in the 30.11.2022 affidavit that writ petitioner would not

press/prosecute the settlement application is of no consequence (as a settlement application cannot be withdrawn) and it has to be made clear that 27.09.2021 application is given a quietus.

(2) The 27.09.2021 settlement application was filed post assessment order which has been called in question before the Appellate Authority and therefore, the plea that assessment order was made pending settlement application cannot be a ground for challenge before the Appellate Authority.

6. Another facet of the matter is qua the request of learned counsel for writ petitioner to fix a time frame for the Appellate Authority to dispose of the appeal that has already been preferred by writ petitioner for various Assessment Years, this Court is informed that there are eight appeals in all and the details are as follows:

S.No.	***Appeal No.***
1.	CIT(A) Chennai-19/10220/2010-11
2.	CIT(A) Chennai-19/11068/2019-20

S.No.	***Appeal No.***
3.	CIT(A) Chennai-19/11069/2019-20
4.	CIT(A) Chennai-19/11070/2019-20
5.	CIT(A) Chennai-19/11071/2019-20 CIT(A) Chennai-19/10555/2014-15
6.	CIT(A) Chennai-19/10571/2015-16
7.	CIT(A) Chennai-19/10629/2016-17
8.	CIT(A) Chennai-19/10471/2017-18

7. As regards the first point flagged by learned Revenue counsel, Hon'ble predecessor Judge has already recorded the *prima facie* view that writ petitioner's application dated 27.09.2021 is invalid. Learned counsel for writ petitioner says that writ petitioner's third application can be closed by this Court. This submission is recorded. This Court makes it clear that writ petitioner's 27.09.2021 application [3rd application] before the Interim Board of Settlement Commission now stands closed [TN/CN52/2021-22/10/IT]. This removes the impediment for the Appellate Authority to hear the appeal. It is made clear that though there is no provision for withdrawal of an application of this nature, the quietus is given by this judicial order, as that would facilitate the hearing of the appeal post withdrawal of captioned writ petition.

8. As regards the averment in the withdrawal application, more particularly averment in paragraph 4 that the writ petitioner will not press/prosecute the aforementioned settlement application, it is made clear that the same is of no consequence as the application has now been given a quietus i.e., closed.

9. Learned Revenue counsel submits that aforementioned settlement application was filed by writ petitioner after receipt of assessment order. Learned counsel for writ petitioner responds by saying that the ground that assessment order was made pending settlement application will not be available to writ petitioner. This drops the curtains on second point flagged by Revenue counsel.

10. As both points flagged by him have been given quietus, there is now no impediment for withdrawal is learned Revenue counsel's say.

11. It appears that jurisdictional Sub-Registrar has been arrayed as a respondent but learned counsel for writ petitioner says that this respondent is given up. This submission is recorded.

12. The Commissioner of Income Tax (Appeals) with address at 1st Floor, Central Circle, Near ICICI Bank, Nungambakkam, Chennai-600 034 is *suo-motu* impleaded as third respondent. Registry to carry out necessary and consequential amendments in the case file before furnishing certified copy and before uploading this order. Learned Revenue counsel accepts notice for third respondent also.

13. Third respondent is directed to dispose of writ petitioner's aforementioned eight appeals as expeditiously as the official business of third respondent would permit and in any event on or before 31.03.2023.

14. Though obvious, it is made clear that this Court has not expressed any view or opinion on the merits of the matter in this order excepting the aforementioned observations regarding closure of 3rd application before Interim Board of Settlement Commission and the observation that Assessment Order said to have been made pending application before Settlement Commission will not be available to the writ petitioner as a ground in the appeal before the third respondent.

15. Captioned Writ Petition disposed of as closed/withdrawn albeit with the aforementioned observations. Consequently, captioned WMPs are also disposed of as closed. There shall be no order as to costs.

22.12.2022

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To

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