IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.08.2023

CORAM :

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

Cont.P.Nos.61 and 62 of 2023
and Sub.Appl.(OS).Nos.46, 47, 49 and 50 of 2023

Thirumurthy Kala
Proprietor of Aravind Traders,
No.7/25, Balaguru Complex,
NSN Palayam,
Coimbatore – 31. ... Petitioner in Cont.P.No.61/2023

Kandasamy Thirumoorthy
Proprietor of Aravind Traders,
No.7/25, Balaguru Complex,
NSN Palayam,
Coimbatore – 31. ... Petitioner in Cont.P.No.62/2023

-Vs-

Mr.Mathrubhutham Srinivasan
The Assistant Commissioner of Income Tax,
Central Circle 3(2), Chennai,
Income Tax Investigation Wing Building,
New No.46, Old No.108,
M.G.Road, Nungambakkam,
Chennai – 600 034. ... Respondent in both Cont.Ps.

Common Prayer : Contempt Petitions under Section 11 of the Contempt of Courts Act, 1971 to punish the respondent for willful disobedience of the order passed by this Court in W.P.Nos.4025 and 4028 of 2022 dated 04.03.2022 as extended vide order dated 21.04.2022.

For Petitioner in both Cont.Ps	:	Mr.P.S.Raman Senior Counsel for M/s.Salai Varun
For Respondents in both Cont.Ps	:	Mr.A.N.R.Jayapratap Standing Counsel

COMMON ORDER

These two contempt petitions are arising out of interim order passed by this Court in W.M.P.Nos.4169 and 4175 of 2022 in W.P.Nos.4025 and 4028 of 2022 by order dated 04.03.2022.

2.In the said two writ petitions, pre-assessment notice issued under Section 148 of the Income Tax Act [hereinafter referred to as "the Act"] by the revenue was under challenge, where a limited interim order of stay was granted which has subsequently been extended from time to time.

3.However, during the subsistence of the said interim order of stay, the revenue i.e., the respondent Department had issued the assessment orders in both the cases that was to be treated as a contempt that is how these contempt petitions had been filed by the petitioners herein.

4.When these contempt petitions came up for hearing on 22.02.2023, I have passed a detailed order where in the operative portion, I have passed the following order:

> *"18.In view of the above, the interim order already been granted in this contempt petitions shall continue, however, this would not preclude the petitioners from filing the writ petitions challenging the proceedings dated 17.12.2022 (assessment order) in the manner known to law.*
>
> *19.If the petitioners are able to get complete relief in the proposed proceedings, the same can be brought to the notice of this Court, thereupon, quietus of these contempt petitions can be given later on."*

5.Pursuant to which, the petitioners filed two more writ petitions i.e., W.P.Nos.12252 and 12256 of 2023 challenging the assessment orders in both the cases. When these writ petitions came up for hearing before a learned Judge on 24.04.2023, the learned Judge passed the following order:

> *"2.The petitioner has filed Writ Petitions in W.P.Nos.4025 and 4028 of 2022 challenging pre-assessment notices and an order of interim stay was granted on 04.03.2022 and extended periodically. Even during the subsistence of the interim stay, the present impugned orders have come to be passed on 17.12.2022 and the petitioner has approached this Court alleging contempt on the part of the respondents.*
>
> *3.Those Contempt Petitions are numbered as Cont.P.Nos.61 and 62 of 2023 and have now been listed on 15.06.2023. When the Contempt Petitions had come up for admission, this Court, vide order dated 22.02.2023, while granting stay of the orders impugned in the present Writ Petitions, also indicated that it would be appropriate that the assessment orders be challenged by way of separate Writ Petitions. Hence the present Writ*

> *Petitions.*
>
> *4. List on 15.06.2023 along with W.P.Nos.4025 and 4028 of 2023. Counter by then with an advance copy served upon the petitioner. Since there is a stay of the assessment orders vide order dated 22.02.2023 in Contempt Petition Nos.61 and 62 of 2023, there is no necessity for any interim orders in these Writ Petitions."*

6.Only at this stage, again these contempt petitions have come up for hearing today.

7.Heard Mr.P.S.Raman, learned senior counsel appearing for the petitioners and Mr.A.N.R.Jayapratap, learned Standing Counsel appearing for the respondent revenue.

8.After hearing both the learned counsels, I am of the view that since the very assessment orders itself are under challenge in the said writ petitions which are pending and main writ petitions also challenging the pre-assessment notice issued under Section 148 of the Act also are pending, those writ petitions can be tagged together and heard at an early date.

9.However, till such time in order to protect the interest of the assesse since the very assessment order itself had been passed when the issue as to whether the pre-assessment notice issued by the respondent is correct or not was pending before this Court in the earlier writ petitions, I feel that some interim protection already been given in this contempt petition can be extended until the final disposal is made in those writ petitins.

10.In the result, the following orders are passed in this contempt petition:

1) That the respondent revenue shall not proceed further pursuant to the impugned assessment orders in W.P.Nos.12252 and 12256 of 2023 till the disposal of the said two writ petitions.
2) It is for the concerned Court as per the roster to tag all these writ petitions for combined hearing for which learned counsels have agreed to take steps.

3) It is made clear that the present assessment orders which are impugned in the said two writ petitions whether have been passed in violation of the interim orders passed by this Court which was subsisting in the earlier writ petitions also is a subject matter to be ultimately decided by the Writ Court while deciding the writ petitions finally.

11.With the aforestated protection to the petitioners, these contempt petitions are closed. No costs. Consequently, connected sub applications are closed.

02.08.2023

Index : Yes/No
cse

To

Mr.Mathrubhutham Srinivasan
The Assistant Commissioner of Income Tax,
Central Circle 3(2), Chennai,
Income Tax Investigation Wing Building,
New No.46, Old No.108,
M.G.Road, Nungambakkam,
Chennai – 600 034.

R. SURESH KUMAR, J.

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