0IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.01.2023

CORAM:

THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

W.P. Nos.1510, 1514 and 1515 of 2023
and
W.M.P. Nos.1599, 1600 and 1601 of 2023

Subramanian Ramesh .. Petitioner
in all writ petitions

vs.

1. The National Faceless Appeal Centre,
North Block,
New Delhi - 110 001.

2. Asst. Commissioner of Income Tax,
Non -Corporate Circle - 9(1),
Chennai - 600 034.

3. Tax Recovery Officer,
Principle Commissioner of Income Tax - 1,
No.121, Mahatma Gandhi Road,
Nungambakkam,
Chennai - 600 034. .. Respondents
in all writ petitions

Prayer in W.P. No.1510 of 2023 : Writ petition filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, directing the 3rd respondent viz., Tax Recovery Officer, Principle Commissioner of Income Tax - 1 to dispose the stay petition dated 11.01.2023 at an early date.

<u>Prayer in W.P. No.1514 of 2023</u> : Writ petition filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, directing the 3rd respondent viz., Tax Recovery Officer, Principle Commissioner of Income Tax - 1 to dispose the stay petition dated 11.01.2023 at an early date.

<u>Prayer in W.P. No.1515 of 2023</u> : Writ petition filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, directing the 3rd respondent viz., Tax Recovery Officer, Principle Commissioner of Income Tax - 1 to dispose the stay petition dated 11.01.2023 at an early date.

For Petitioners	:	Mr.G. Ashokapathy
For Respondents	:	Mr.D.Prabhu Mukunth Arun Kumar, Jr. Standing counsel

<u>COMMON ORDER</u>

By consent of both parties, these writ petitions are taken up for final disposal in the admission stage itself.

2. Mr. D. Prabhu Mukunth Arun Kumar, learned Junior Standing counsel accepts notice for the respondents.

3. These writ petitions have been filed for a Mandamus seeking for a direction to the 3rd respondent to dispose of the stay petitions, all dated 11.01.2023 filed by the petitioner, expeditiously.

4. The petitioner claims that he has challenged the Assessment orders, all dated 10.03.2015 passed for the Assessment years 2009-10, 2010-11 and 2011-12 by filing the statutory appeals before the 1st respondent under Section 246A of the Income Tax Act, 1961 on 09.01.2023. The petitioner also claims that since the appeals have been filed beyond the prescribed time as fixed under the statute, he has also filed stay petitions on 11.01.2023 with the 3rd respondent seeking stay of the Assessment Order, dated 10.03.2015. The petitioner apprehends that pursuant to the auction notice issued by the 3rd respondent on 22.12.2022, his property will be sold which will cause great prejudice and hardship to him. The petitioner has also stated in the affidavit filed in support of this writ petition that his business was managed by his Father who is now no more and that is the reason as to why he did not file the statutory appeals, within the prescribed time.

5. However, the learned Standing counsel appearing for the respondents would submit on instructions that these writ petitions are not maintainable in view of the following :

a) the statutory appeal filed by the petitioner before the 1st respondent has been filed by him after a period of eight years from the date of the assessment order, which was passed on 10.03.2015.

b) if at all a stay can be sought for in respect of the auction, the petitioner will have to approach the 3rd respondent as per Rule 66 of the Income Tax Rules and therefore, these writ petitions are not maintainable.

c) The petitioner has not sought for stay of the Assessment Order dated 10.03.2015 before the Assessing Officer as prescribed under Section 220(6) of the Income Tax Act.

6. Admittedly, the property has been brought for auction by the 3rd respondent as seen from the auction notice dated 22.12.2022. The petitioner claims that he was not aware of the Assessment Order and he came to know of the same only recently and that is the reason as to why he has filed the statutory appeal only on 09.01.2023. He claims that his Father was looking after his business earlier who is now no more. The petitioner has also given a representation dated 11.01.2023 to the 3rd respondent seeking for stay of auction, which is the subject matter of these writ petitions.

7. The petitioner seeks for early disposal of the said representations by the 3rd respondent in these writ petitions. The

petitioner also claims in the affidavit filed in support of these writ petitions that he is not liable to pay the tax amount as determined under the Assessment Order dated 10.03.2015. Since the property of the petitioner is being put to auction on account of tax and penalty dues payable by the petitioner as per the Assessment Orders passed by the respondents, and that too when the petitioner claims that he has already filed a petition before the 3rd respondent seeking for stay of auction, this Court is of the considered view that an interim protection will have to be granted in favour of the petitioner by directing the respondents to keep the auction in abeyance for a limited period on condition that the petitioner deposits 30% of the demand amount for each of the Assessment Years viz., Assessment years 2009-10, 2010-11 and 2011-12, within a period of one week from the date of receipt of a copy of this order.

8. This order is passed only to protect the interest of the petitioner in case the petitioner is able to convince the 3rd respondent that he is entitled to get stay of the auction based on his representations, all dated 11.01.2023, which are the subject matters of these writ petitions.

9. This Court is not expressing any opinion on the merits of the petitioner's contentions in these writ petitions.

10. For the foregoing reasons, these writ petitions are disposed of by directing the petitioner to deposit with the 3rd respondent, 30% of the demand amount made by the 3rd respondent for the Assessment years 2009-10, 2010-11 and 2011-12, within a period of one week from the date of receipt of a copy of this order. On deposit of the said amount before the 3rd respondent, within the stipulated time, the 3rd respondent is directed to pass final orders on the petitioner's representation, dated 11.01.2023 seeking for stay of the auction in respect of his property for his non payment of the tax demand and the penalty amount, within a period of four weeks thereafter.

11. On payment of the aforesaid amount by the petitioner, within the stipulated time and till final orders are passed by the 3rd respondent on the petitioner's representations, dated 11.01.2023, the auction of the petitioner's property shall be kept in abeyance by the 3rd respondent. However, it is made clear that if the petitioner fails to deposit the aforesaid amount before the 3rd respondent, within a period of one week from the date of receipt of a copy of this order, the 3rd respondent is at liberty to proceed with the auction and they need not wait for the final

orders to be passed by the 3rd respondent on the petitioner's representations, dated 11.01.2023.

12. No costs. Consequently, connected miscellaneous petitions are closed.

19.01.2023

Note : Issue order copy on 20.01.2023

Index: Yes/No
Speaking Order/Non-Speaking Order
Neutral citation case : Yes / No
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To :
1. The National Faceless Appeal Centre,
North Block,
New Delhi - 110 001.

2. Asst. Commissioner of Income Tax,
Non -Corporate Circle - 9(1),
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ABDUL QUDDHOSE, J.

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