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W.P.No.10710 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 24.08.2023

Pronounced on : 01.09.2023

CORAM : JUSTICE N.SESHASAYEE

W.P.No.10710 of 2023
and WMP.No.10669 of 2023

G.Moorthi

... Petitioner

Vs.

1.The Recovery Officer
Securities and Exchange Board of India
Recovery Division
Southern Regional Office
Overseas Towers, 7th Floor
756-L, Anna Salai
Chennai - 600 002.

2.The Manager
Karur Vysya Bank Ltd
22A, 7th Avenue, Ashok Nagar
Chennai - 600 083.

3.The Chief Manager
State Bank of India
Kodambakkam Branch
Chennai - 600 024.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India
praying for a Writ of Certiorari calling for the records in the attachment



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proceeding bearing the reference number 3189/2017 dated 04.01.2023 issued by Respondent No.1 and quash the same and grant any other reliefs.

For Petitioner : Mr.K.Senguttuvan

For Respondents : Mr.C.Prasanna Venkatesh for R1

Mr.S.L.Rajesh for R2

Mr.K.Newlin Frederick for R3

ORDER

The Adjudicating Officer of SEBI vide its order dated 16.07.2017 has imposed the penalty of Rs.25,52,781/- on the petitioner vis-a-vis the petitioner's PAN No. given in the order does not belong to him, but to a third party. But ignoring the same, the petitioner preferred an appeal to the Securities Appellate Tribunal. On 07.08.2019, it passed its order dismissing the petitioner's appeal. Thereafter, the first respondent has come out with a notice attaching two bank accounts of the petitioner, and frozen its operation. This is now under challenge in this writ petition.

2. Pursuant to the order of this Court dated 10.04.2023, the petitioner had deposited Rs.25,52,781/-. Now the issue is all about the payment of



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interest. According to the first respondent, the petitioner is liable to pay Rs.17,34,791/- as interest on the penalty amount from 16.06.2017 till 11.05.2023.

3. The learned counsel for the petitioner submits that he has not seriously challenged the claim of penalty as he had already paid it, and hence he limits his challenge to the claim of interest.

4.1 The learned counsel submitted that the first respondent claims interest based on Explanation 4 of Section 28A of the SEBI Act, 1992. In terms of Explanation 4, the interest is required to be as per Sec. 220 of the Income Tax Act, 1961. Section 220 provides that where any amount, otherwise than by way of advance tax, specified as payable in a notice of demand under Section 156, the same shall be paid within 30 days of the service of the notice at the place and to the person mentioned in the notice.

4.2 If the facts of this case is tested on the touchstone of Section 220 of the Income Tax Act, it will be evident that the first respondent cannot claim any interest, since the order of SEBI imposing the penalty carries a wrong PAN



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particulars. It may be that the petitioner might have chosen to challenge that order before the appellate Tribunal and also before this Court, but vis-a-vis the payment of interest, it must be fastened on the person satisfying all the features that goes to identify the person conclusively, argued the counsel.

5. The learned counsel for the first respondent submitted that if the petitioner is aggrieved by the order of the appellate Tribunal, he ought to approach the Hon'ble Supreme Court under Section 15-Z and challenge it. And if it is against such other orders of the Board or the adjudicating officer, then the petitioner ought to approach the SEBI Appellate Tribunal under Section 15T. Hence, the present writ is not entertainable. Secondly, so far as the present dispute itself is concerned, the petitioner knew against whom the order of penalty was passed, and it is hence he has to approach the appellate Tribunal, and it is too late in the day for the petitioner to plea innocence.

6. This Court concurs with the submission of the counsel for the first respondent on both the scores. It is not in dispute that the SEBI has imposed the penalty on the petitioner and he had also paid it. The interest



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is but incidental to it. Therefore, the petitioner cannot escape paying the interest component as is now demanded. The PAN particulars are, but one of the mode to identify an individual, and merely because a wrong PAN number is given, it does change the individual, more so when the petitioner had paid the penalty without demur. Turning to the maintainability, the petitioner ought to have challenged it in the manner provided under the Act.

7. To conclude, for the foregoing reasons, this petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

01.09.2023

Index : Yes / No

Internet : Yes / No

Speaking order / Non-speaking order

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N.SESHASAYEE.J.,

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Pre-delivery order in
W.P.No.10710 of 2023

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