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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.07.2023

CORAM :

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.No.20382 of 2023
and
W.M.P.No.19742 of 2023

Irfanudeen Abdul Munaf ... Petitioner

Vs.

1.Principal Director of Income Tax (Inv.),
Central Circle - 1, Chennai - 34.

2.Zonal Accounts Officer,
Zonal Accounts Office,
CBDT, Chennai.

3.Deputy Director of Income Tax (Inv.),
Central Circle - 1(4),
3rd Floor, Investigation Building,
No.46 (Old No.108),
Mahatma Gandhi Road, Chennai.

4.Principal Commissioner of Income Tax,
Central, Chennai - 1.
Room No.301, New Building-III Floor,
Investigation Building,
No.46 (Old No.108),
Mahatma Gandhi Road, Chennai.

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5.The Adjudicating Authority,
Under the Prohibition of Benami Property Transactions Act,
Office of the Competent Authority [SAFEM (FOP)A & NDPSA],
Shastri Bhawan, New Building,
4th Floor, No.26, Haddows Road,
Nungambakkam, Chennai - 600 006.

6.The Deputy Commissioner of Income Tax (Benami Prohibition),
Room No.2, Income Tax Investigation Wind Building,
Ground Floor, 46, M.G.Road,
Nungambakkam, Chennai - 600 084. ... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Mandamus, to direct the third respondent to adjust the seized cash in the Principal Directors Account against the tax dues of the petitioner.

For Petitioner : Mr.R.Sivaraman

For Respondents : Mr.A.N.R.Jayaprathap
Standing Counsel

ORDER

Mr.A.N.R.Jayaprathap, learned Standing Counsel takes notice on behalf of the respondents.

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2. The petitioner has filed this writ petition for a Mandamus to direct the third respondent to adjust the cash that was seized from the hands of the petitioner's friend namely Nathar Sahib on 20.06.2020. After the cash was seized on 20.06.2020, seven different Assessment Orders came to be passed on 27.03.2022 for the Assessment Years 2015-2016 to 2021-2022. The cash of Rs.99,75,000/- which is said to belong to the petitioner and was seized from the hands of the petitioner's aforesaid friend, was taxed in the hands of the petitioner for the Assessment Year 2021-2022.

3. Meanwhile, against the aforesaid Assessment Orders, the fourth respondent has initiated proceeding under Section 263 of the Income Tax Act, 1961 on 13.01.2023. The said proceeding is said to be pending. Meanwhile, the Officers enforcing the Prohibition of the Benami Property Transactions Act, 1988, namely the fifth respondent proceeded to pass an order dated 14.02.2023. By the aforesaid order, the petitioner was treated as the beneficial owner of the cash, was seized on 20.06.2020 from the petitioner's friend namely Nathar Sahib.

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4. By the aforesaid order, the arrangement in respect of cash of Rs.99,75,000/- which was seized from the hands of the petitioner's said friend namely Nathar Sahib was held to be a benami transaction within the meaning of Clause A of Sub-Section 9 of Section 2 of the Prohibition of the Benami Property Transactions Act, 1988. The fifth respondent ultimately held as follows:-

> "11. As discussed in the preceding paragraphs, I have carefully considered all the submissions made by the Initiating Officer. Due opportunity of hearing was extended to the Defendants; all efforts to reach out to D1 and D2 were in vain. They neither replied to the notice nor appeared before me, for hearing. No representation nor any communication from the Defendants was received till the date of passing this Order. Facts and evidences have been ascertained, taking into account all the available materials. Having done so, in the light of the preceding discussion and findings, I pass the following Order:
>
> (i) Movable property (cash) impugned in the present reference, held by Shri.Nathar Sahib (defendant, D1, Benamidar) is a Benami Property, within the meaning of section 2(8) of the PBPTA; the said benami property, is a subject matter of Benami transaction within the meaning of section 2(9)(A) of the PBPTA;

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(ii) The Reference filed by the I.O., Chennai BPU, bearing No.R-592/2022 is allowed; and

(iii) The Provisional Attachment Order dated 19.12.2022 passed by the I.O. u/s 24(4)(a)(i) of the PBPT Act, is confirmed."

5. Aggrieved by the same, the petitioner herein filed W.P.No.9868 of 2023, which came to be allowed at the time of admission on 30.03.2023, by quashing the said order therein dated 14.02.2023 of the fifth respondent herein (first respondent therein). The case was remitted back to the fifth respondent herein to pass a fresh order after consideration of facts on merits. The learned single Judge of this Court vide the aforesaid order dated 30.03.2023 also directed the fifth respondent herein to pass orders within a period of two weeks from the date of receipt of the copy of the order.

6. It appears that the order has not been passed within a period of two weeks. The case is said to be listed for hearing on 01.08.2023. During the interregnum, the petitioner has come by way of this Writ Petition.

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7. The learned counsel for the petitioner would submit the cash that was seized on 20.06.2020 from the petitioner's friend Nathar Sahib is an asset of the petitioner for the purpose of Section 132B of the Income Tax Act, 1961 and therefore, in terms of Section 132B of the Income Tax Act, 1961, it was liable to be adjusted against the tax liability of the petitioner for the Assessment Year 2020-2021. It is submitted that there cannot be an attachment of the said cash, which, in any event, has been seized by the Income Tax Department on 20.06.2020.

8. Opposing the prayer, the learned Standing Counsel for the respondents would submit that the petitioner has approached this Court by way of this writ petition without even filing an application as is contemplated first proviso to Section 132 of the Income Tax Act, 1961. It is submitted that the writ petition is premature and therefore the present writ petition is liable to be dismissed.

9. I have considered the arguments advanced by the learned counsel for the petitioner and the learned Standing Counsel for the respondents.

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10. The prayer of the petitioner for a Mandamus cannot be countenanced without an application by the petitioner under first proviso to Section 132 of the Income Tax Act, 1961, although there could be a corresponding duty on the part of the respondents to appropriate the amount that was seized on 20.06.2020, if an application is made. If the aforesaid seized amount is to be treated as an asset of the petitioner and adjusted under Section 132 of the Income Tax Act, 1961, the petitioner has to first file an application as is contemplated under the aforesaid provision.

11. Considering the fact that a parallel proceedings is also pending before the fifth respondent under the Prohibition of the Benami Property Transactions Act, 1988, pursuant to the order passed by this Court in W.P.No.9868 of 2023, I direct the petitioner to file appropriate application before the third respondent in accordance with the provisions of Sections 132B of the Income Tax Act within a period of 7 days from the date of receipt of a copy of this order. The third respondent shall dispose the same within a period of 8 days thereafter.

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12. Considering the fact that the parallel proceedings is also likely to be heard and disposed by the fifth respondent on 01.08.2023 under the Prohibition of the Benami Property Transactions Act, 1988, the third respondent shall endeavour to pass orders as expeditiously taking note of the order to be passed by the fifth respondent.

13. This Writ Petition stands disposed of with the above observations. No costs. Consequently, connected Writ Miscellaneous Petition is closed.

12.07.2023

Index : Yes/No
Internet : Yes/No
Speaking Order/Non-Speaking Order
Neutral Citation : Yes/No

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To

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C.SARAVANAN, J.

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