IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.08.2023

CORAM :

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.No.23117 of 2023
and
W.M.P.No.22668 of 2023

K.Tamilselvi ... Petitioner

Vs.

1.Income Tax Officer (HQ) (PR),
Aayakar Bhavan,
No.121, Mahatma Gandhi Road,
Nungambakkam, Chennai - 600 034.

2.The Tax Recovery Officer,
Office of the Tax Recovery Officer,
2, Barracks Cross Street,
Vellore - 632 001.

3.The Assistant Commissioner of Income Tax,
Office of the Assistant Commissioner of Income Tax,
No.121, Mahatma Gandhi Road,
Nungambakkam, Chennai - 600 034.

4.Deputy Commissioner of Income Tax,
Circle I, Vellore.

5.The Sub Registrar,
Ambur Railway Station Road,
Ambur, Tiruppur District - 635 802. ... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorarified Mandamus, to call for the records of the second respondent in the order dated 20.02.2004 bearing No.TR.No.5/02 03 and quash the same as illegal and direct the second respondent to raise the attachment on the property located at Door No.22A, Pudu Street, Sanangkuppam, Ambur Ward-E, Block 8, T.S.No.26 Ambur 635 814, Tirupattur.

For Petitioner	:	Mr.P.J.Rishikesh
For Respondents	:	
For R1 to R4	:	Dr.B.Ramaswamy Senior Standing Counsel
For R5	:	Mr.J.C.Durairaj Additional Government Pleader

ORDER

Dr.B.Ramaswamy, learned Senior Standing Counsel takes notice on behalf of the first to fourth respondents and Mr.J.C.Durairaj, learned Additional Government Pleader takes notice on behalf of the fifth respondent.

2. The petitioner is wife of Late N.Kulasekara Pandian, an Income Tax Assessee, who passed away during the pendency of the assessment proceedings. The property was attached by the second respondent on 20.02.2004.

3. The deceased assessee suffered an adverse Assessment Order on 29.09.1999 for the block assessment period from 1988 to 1998.

4. In this case, pursuant to a raid on 02.07.1999, the Taxation Officer-cum-Assessing Authority (Assessing Officer) came to a conclusion that the deceased assessee had an undisclosed income of Rs.90,45,324/-.

5. Against the Assessment Order dated 29.09.1999, the petitioner as a Legal Heir/Representative preferred an appeal before the Commissioner of Income Tax (CIT) (Appeals). The Commissioner of Income Tax (CIT) (Appeals) upheld the order of the Assessing Officer vide order dated 27.11.2006.

6. A further appeal of the petitioner before the Income Tax Appellate Tribunal (ITAT) in I.T.(SS)A.No.17/Mds/07 for the block assessment period 1988-1989 to 1998-1999 was allowed on the ground that there was violation principles of natural justice by the ITAT Bench, Chennai on 30.03.2007. The Income Tax Appellate Tribunal (ITAT) remitted the case back to the Assessing Officer to pass fresh order *de novo*. Mean while, the property on the name of the deceased assessee were attached by an order dated 20.02.2004.

7. Pursuant to the aforesaid order, a notice was also issued to the petitioner on 01.12.2008. The petitioner was called upon to come for a personal hearing on 11.12.2008 at 11.00 a.m.

8. According to the petitioner, nothing has further progressed and therefore, the petitioner had sent a representation dated 16.05.2023 seeking for release of attachment order followed by another representation/reply dated 29.05.2023 requesting the respondents to lift the order of attachment dated 20.02.2004.

9. The learned counsel for the petitioner would submit that the order of

attachment dated 20.02.2004 preceded the order of ITAT dated 30.03.2007 and therefore has no vigour.

10. It is therefore submitted that despite the same, the order of attachment is reflected in the registers maintained in respect of the property before the Registration Department. It is therefore submitted that the order is liable to be quashed and the petition be allowed.

11. I have considered the arguments advanced by the learned counsel for the petitioner, the learned Senior Standing Counsel for the first to fourth respondents and the learned Additional Government Pleader for the fifth respondent.

12. The petitioner's representation dated 16.05.2023 was responded by the Income Tax Officer (HQ) (Preventive) the first respondent herein on 18.05.2023 to which, the petitioner has responded again by a communication dated 29.05.2023.

13. The Income Tax Officer (HQ) (preventive), the first respondent has

addressed a letter dated 12.06.2023 to the Deputy Commissioner of Income Tax, Circle-1, Vellore the fourth respondent for taking necessary action as whether any orders have been passed pursuant to the intimation notice dated 01.12.2008 as same was not ascertainable.

14. Be that as it may, the respondents are directed to consider the petitioner's representation/reply dated 16.05.2023 and 29.05.2023 and dispose the same on merits and in accordance with law within a period of four weeks from the date of receipt of a copy of this order. The *de novo* proceeding which ordered by the Income Tax Appellate Tribunal (ITAT) is also directed to completed.

15. The present Writ Petition stands disposed of with the above observations. No costs. Consequently, connected Writ Miscellaneous Petition is closed.

07.08.2023

Index : Yes/No
Internet : Yes/No
Speaking Order/Non-Speaking Order
Neutral Citation : Yes/No
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C.SARAVANAN, J.

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