IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated :11.09.2024

C O R A M :

THE HONOURABLE MR. JUSTICE **KRISHNAN RAMASAMY**

**W.P.No.13460 of 2024**
**and W.M.P.No.14615 of 2024**

A.Selvaraj ... Petitioner

vs.

1. The Principal Commissioner of Income Tax,
   Central – II, Chennai 600 034.

2. The Deputy Commissioner of Income Tax,
   Central Circle – I, Coimbatore ... Respondents

Petition filed under Article 226 of the Constitution of India, praying to issue a writ of certiorarified mandamus, calling for the entire records in pursuant to the rejection order issued by the 2nd respondent vide letter No.ITBA/COM/F/17/2023-24/1060277534(1) dated 30.01.2024 rejecting the petitioner's representation dated 29.12.2013 and quash the same with a consequential direction to the respondents to return the petitioner's original documents seized from his house during the raid conducted on 27.02.2015 against his son A.Arputharaj by the respondents' officials.

For Petitioner : Mr.N.Sankara Sabari

For Respondents : Mr.A.P.Srinivas, Senior Standing Counsel

**O R D E R**

The writ petition has been filed challenging the rejection order of the 2nd respondent, dated 30.01.2024 and also seeking a direction to the respondents to return the petitioner's original documents seized from his house during the raid conducted by the officials on 27.02.2015 against his son A.Arputharaj.

2. The learned counsel for the petitioner submitted that the respondents seized some documents at the time of search conducted at his house by them, belonging to his son and also his own documents. The second respondent issued three notices of demand under Section 156 of Income Tax Act to the petitioner on 11.10.2017. Therefore, the petitioner filed writ petitions in W.P.Nos.28035 to 28037 of 2017 praying for a direction to the respondents to return the documents.

This Court, on 08.12.2017 directed the petitioner to pay 50% of the demand for the three Assessment Years, along with interest within a week. The petitioner has complied with the said order passed by this Court. Subsequently, on 15.12.2017, when the matter came up for final hearing before this Court, this Court observed that, since the petitioner has already paid 50% of the tax along with interest, a direction was issued to the second respondent to release the document in question and on receipt of the document, the petitioner shall pay the 50% balance amount of tax within 15 days. Upon complying with the directions of this Court, the respondents only released the three documents seized by them. The petitioner sent a representation to the respondents dated 24.06.2022, requesting them to return the remaining documents. Instead of releasing the remaining documents seized during the raid, the respondents have once again issued demand notices for the Assessment Years 2009-2010, 2010-2011 and 2011-2012. The petitioner also sent a reply on 24.06.2022 to the second respondent intimating about the payment of Rs.84,06,126/-, which was made for the Assessment Year 2009-2010. However, they have not returned the documents. Again, he has filed a writ petition in W.P.No.23215 of 2023 praying for a direction to the respondents to release the documents. This Court, on 01.12.2023, directed the petitioner to submit one more representation within a period of one week from the date of receipt of a copy of that order. Subsequently, the petitioner sent another representation to the second respondent on 29.12.2023. However, the representation was rejected and the impugned order was passed on 30.01.2024. Hence, the same is liable to set aside.

3. On the other hand, the learned Senior Standing Counsel appearing for the respondents submitted that only 5 documents were seized from the premises of the petitioner and a Panchanama was also issued in this regard. He would further submit that these 5 documents are the evidence to prove the case against the petitioner's son, as they pertain to the transactions between the petitioner and his son. In such circumstances, they can provide only the xerox copies and they are not

in a position to return the original documents. Only on completion of entire assessment proceedings, they can return the original documents. He would further submit that the petitioner can avail the remedy under Section 132(10) of the Income Tax Act, if he is aggrieved. Without doing so, he approached this Court by filing this writ petition. But the learned counsel for the petitioner submitted that only the Assessee can file an appeal before the authority concerned, and not the petitioner, who is a third party.

4. Heard the learned counsel on both sides and perused the materials available on record.

5. In the present case, the issue is with regard to return of the original documents seized during the search conducted in the petitioner's house. Totally, 5 documents were seized from the premises of the petitioner. The petitioner seeks return of the documents which were not only seized from the premises of the petitioner, but also from

the third party houses. Hence, he has no right to seek those documents which were seized from the third party. He is entitled to only 5 documents. However, he can only seek those documents upon completion of the assessment proceedings. Now, they are entitled to get only a copy of those documents. These are all the documents which ultimately were seized about the involvement of the petitioner's son in the tax evasion. The respondents have come to the conclusion that there are incriminating documents in connection with the offence alleged against the petitioner's son. Until completion of the assessment proceedings, the petitioner is not entitled for the original documents. Under such circumstances, the respondents have rightly rejected the contention of the petitioner. I see no reason to interfere with the same. Accordingly, this Writ Petition is dismissed. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

11.09.2024

srn

To

1. The Principal Commissioner of Income Tax,
   Central – II, Chennai 600 034.

2. The Deputy Commissioner of Income Tax,
   Central Circle – I, Coimbatore

KRISHNAN RAMASAMY,J.

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