IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.08.2024

CORAM:

THE HONOURABLE **Mr. JUSTICE KRISHNAN RAMASAMY**

W.P. No.23858 of 2024
and W.M.P.No.26117 of 2024

Leelavathi .. Petitioner

Versus

1. The Commissioner of Income Tax (Appeals)
   National Faceless Appeal Centre,
   New Delhi.

2. The Assessment Unit,
   Income Tax Department,
   National Faceless Centre,
   New Delhi.

3. The Principal Commissioner of Income Tax,
   Income Tax Department,
   Race Course,
   Coimbatore – 641 018. .. Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus to call for the records of the impugned order dated 30.07.2024 vide ITBA/COM/F/17/2024-25/1067131469(1) passed by the third respondent and quash the same and direct the respondents to stay the recovery of tax demand until the disposal of the appeal by the petitioner before the Commissioner of Income Tax (Appeals).

For Petitioner : Mr.K.Vasanthanayagan

For Respondents : Dr.B.Ramaswamy
Senior Standing Counsel

ORDER

This writ petition is filed challenging the impugned order dated 30.07.2024 vide ITBA/COM/F/17/2024-25/1067131469(1) passed by the third respondent and to direct the respondents to stay the recovery of tax demand until the disposal of the appeal by the petitioner before the Commissioner of Income Tax (Appeals).

2. The case of the petitioner is that the second respondent has passed an assessment order dated 16.02.2024 denoting Rs.60,85,600/- as additional income from other source under Section 69A of the Income Tax Act, 1961 and raised a demand of Rs.57,72,878/-. Aggrieved by the same, the petitioner has preferred a statutory appeal before the first respondent and also filed a stay application before the third respondent. The third respondent, after considering the facts and circumstances of the case, passed the impugned order dated 30.07.2024, directing the petitioner to pay Rs.11,54,600/- i.e. 20% of the impugned demand. Aggrieved over the said impugned order, the petitioner has filed the present writ petition.

3. Mr.K.Vasanthanayagan, the learned counsel for the petitioner, would submit that the joint family ancestral property was sold for a sum of Rs.21,85,000/- wherein, totally six members having shares. However, a notice was issued and assessment order was passed for a sum of Rs.57,72,878/- without assigning any reasons. The learned counsel for the petitioner would also submit that the petitioner is a widow and her family properties were sold and now since she is facing financial crisis, she is not in a position to pay the 20% of the total disputed demand. Therefore, considering the financial position of the petitioner, the learned counsel for the petitioner would urge this Court to reduce the per centage of the total disputed demand.

4. On the other hand Dr.B.Ramaswamy, learned Senior Standing Counsel appearing for the respondents, by filing a counter, would strongly oppose for reducing any amount as urged by the petitioner. He would submit that in the event if the Court is inclined to reduce the amount, the petitioner may be directed to pay 15% of the total disputed demand.

5. Heard both sides and perused the materials available on record.

6. On a perusal of the affidavit filed in support of this writ petition it is seen that the petitioner is a widow and her family property was sold for a total sum of Rs.21,85,000/-, whereas the assessment order was passed for a sum of Rs.57,72,878/- against which, an appeal has been preferred by the petitioner. The third respondent has passed the impugned order directing the petitioner to pay 20% of the total disputed demand. Since the petitioner is a widow and facing financial problem, she expressed her hardship in paying 20% of the total disputed demand as directed as directed by the third respondent.

7. Considering the hardship expressed by the petitioner and the submissions made by the learned standing counsel for the respondents, this Court feels it appropriate to direct the petitioner to pay a sum of Rs.2,50,000/- (Rupees Two Lakhs Fifty Thousand only) instead of 20% of the total disputed demand as directed by the 3rd respondent vide impugned order.

8. Accordingly, the petitioner petitioner is directed to pay a sum of Rs.2,50,000/- within a period of four weeks from the date of receipt of a copy of this order and upon such deposit, the respondents shall stay the recovery of tax demand until the disposal of the appeal filed by the petitioner before the first respondent.

9. This Court, generally at the instance of the learned Standing counsel, adjourns the matters for filing counter affidavits from time to time. In one matter, even after adjourning the matter on seven occasions, still the learned standing counsel sought adjournment on eighth occasion, which prompted this Court to impose the costs. While so, in the present case, it is important to note that Thiru Dr.B.Ramaswamy, learned Senior Standing Counsel appearing for the respondents has filed the counter affidavit immediately on the first day itself when the matter is taken up for admission.

10. This Court places its appreciation on record towards best efforts taken by Thiru Dr.B.Ramaswamy, learned Senior Standing Counsel for the respondents, in filing the Counter affidavit without taking any adjournment, when the matter came up for first hearing and facilitated this Court to dispose of the matter without keeping it pending for want of counter.

11. When the learned Senior Standing Counsel is able to file the counter on the very first day of hearing, this Court is unable to understand as to why the other learned standing counsels are unable to file the counter affidavits in time in their respective matters.

12. Generally, the litigant public is under impression that pendency of the cases is at the instance of the Courts. But the Courts will always take strenuous efforts to dispose of the matters where both the parties have made out the pleadings. Majority of Writ Petitions have been pending for want of counter affidavits and lack of co-operation on behalf of the statutory authorities and the learned standing counsel and Government Pleaders who represent them.

13. There cannot be any excuse for not filing the counter affidavits in time. This Court expects all the respective learned Standing Counsel to be prompt in filing the counter affidavits and make themselves ready to argue the cases without seeking more adjournments, by which, not only the judicial time would be be saved but also more number of cases would be disposed of. The concerned authorities of the Income Tax Department shall take initiative and co-operate with their respective learned Standing counsel in filing the counter affidavits without seeking more adjournments.

14. With the above direction, this Writ Petition is disposed. No costs. Connected miscellaneous petition is closed.

19.08.2024

Index:Yes
Speaking order
Neutral Citation Case: Yes

Note of Office: Issue order copy on 28.08.2024
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To

1. The Commissioner of Income Tax (Appeals)
   National Faceless Appeal Centre,
   New Delhi.

2. The Assessment Unit,
   Income Tax Department,
   National Faceless Centre,
   New Delhi.

3. The Principal Commissioner of Income Tax,
   Income Tax Department,
   Race Course,
   Coimbatore – 641 018.

4. The Principal Chief Commissioner of Income Tax,
   (Tamil Nadu and Puducherry Main)
   No.121, Nungambakkam High Road, M.G.Road
   Chennai – 600 034.

KRISHNAN RAMASAMY, J.

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W.P. No.23858 of 2024

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