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W.P.No.35678 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.01.2024

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THE HONOURABLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

W.P.No.35678 of 2023
and W.M.P.No.35653 of 2023

NAmudha

... Petitioner

-VS-

1.The Income Tax Officer,
Non-Corporate Circle - 19(3) CHE,
Aayakar Bhawan, Annexe Building,
No.121, Mahatma Gandhi Road,
Nungambakkam, Chennai - 600 034.

2.The National Faceless Assessment Centre,
Central Board of Direct Taxes,
New Delhi.

3.The Valuation Office - II,
Income Tax Department - Valuation Cell,
No.110, 3rd Floor, Prakash Presidium,
M.G.Road, Chennai 600 034.

4.The Commissioner of Income Tax (Appeals) (NFAC),
The National Faceless Appeal Centre,
Central Board of Direct Taxes,
New Delhi.

... Respondents



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PRAYER: Writ Petition filed under Article 226 of the Constitution of India, pleased to issue a Writ of Mandamus, directing the respondent to dispose of the statutory appeal filed by the petitioner under Section 246A of the Income Tax Act, challenging the Assessment Order ITBA/AST/S/147/2022-23/1051280393(1) dated 24.03.2023 passed by the second respondent for the Assessment Year 2018 - 2019 within a reasonable time to be fixed by this Hon'ble Court.

For Petitioner : Mr.N.Ramakrishnan

For Respondents : Ms.S.Premalatha, Jr.SC (IT)

ORDER

By this writ petition, the petitioner seeks a direction to the fourth respondent to dispose of the statutory appeal filed by the petitioner challenging the assessment order dated 24.03.2023 in



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respect of the assessment year 2018 - 2019 within a reasonable time.

An interim stay of collection of the disputed tax demand of Rs.19,41,080/- is also prayed for.

2. The petitioner asserts that she is an Income Tax assessee and that she purchased an immovable property in the interior part of Guindy Industrial Estate under a sale deed dated 10.11.2023, which was registered as Document No.5044 of 2017 by the Sub Registrar, Alandur. According to the petitioner, the fair market value of the property was Rs.42,50,000/-, which was specified as sale consideration. On account of the fact that the guideline value of the property at the relevant time was Rs.75,18,000/-, stamp duty was paid on such guideline value.

3. In these circumstances, the petitioner states that her return of income for the assessment year 2018 - 2019 was selected for scrutiny and that notices were issued calling upon her to show cause as to



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why the sum of Rs.32,68,000/-, which represents the difference between the income disclosed in the return and the guideline value, should not be treated as income from other sources as per Section 56(2)(x) of the Income Tax Act, 1961 (the Income Tax Act). By response dated 02.02.2023, the petitioner reiterated that the document value represents the fair market value and that a reference should be made to the Departmental Valuation Cell for determination of the fair market value.

4. By acceding to such request, the valuation of the relevant property was referred to the Departmental valuation Officer, namely, the third respondent herein. Without waiting for the valuation report, however, the petitioner states that the assessment order was issued and that the petitioner was called upon to pay Rs.19,41,080/-. The said assessment order is the subject of a statutory appeal.

5. After referring to the relevant documents, learned counsel for



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the petitioner submits that the petitioner is entitled to a stay of any coercive action pending adjudication of the statutory appeal. He places reliance on the judgment of this Court in *N.Meenakshi v. Assistant Commissioner of Income Tax, 2010(1) CTC 54*, wherein this Court recognized that Section 50C of the Income Tax Act confers a vital statutory right on an assessee with regard to requesting for the valuation of an asset by the Departmental Valuation Officer.

6. Ms.S.Premalatha, Jr.SC(IT), accepts notice for the respondents. She submits that the assessment order was issued prior to the receipt of the valuation report in view of the prescribed limitation date for completion of assessment. She further submits that the statutory appeal is pending and that, therefore, no interference is called for at this juncture.

7. The assessment order proceeds on the basis that the guideline value of the relevant immovable asset represents the real



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market value. Such conclusion has been drawn without awaiting the valuation report from the third respondent. As a consequence, in spite of the petitioner asserting and reiterating that the sale consideration specified in the sale deed represents the fair market value, the petitioner has been put to prejudice without any material to support the conclusion that the guideline value represents the fair market value. Therefore, the petitioner is entitled to an interim stay of coercive action pending disposal of the statutory appeal. It is needless to say that it is also just and necessary that the statutory appeal be disposed of expeditiously.

8. Accordingly, W.P.No.35678 of 2023 is disposed of with the following directions:

(i) The fourth respondent is directed to dispose of the statutory appeal against the assessment order in ITBA/AST/S/147/2022-23/1051280393(1) dated 24.03.2023 within a maximum period of *three months* from the date of receipt of a copy of this order.



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WEB COPY (ii) Until the statutory appeal is disposed of, the first and second respondents are restrained from initiating any coercive action pursuant to the assessment order for recovery of the disputed tax demand.

(iii) There shall be no order as to costs.

(iv) Consequently, W.M.P.No.35653 of 2023 is closed.

03.01.2024

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Index : Yes / No

Internet : Yes / No

Neutral Citation: Yes / No

To

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SENTHILKUMAR RAMAMOORTHY,J

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