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(2017) 03 MAD CK 0041

In the Madras High Court

Case No : 7453 of 2017 and W M P Nos 8134 to 8137 of 2017

M/s.The Villupuram District Central Co-operative Bank Ltd., repreented by tis General Manager Mr.R.Saravanan — APPELLANT

Vs

The Assistant Commissioner of Income Tax, & Ors. — RESPONDENT

Date of Decision : 27-03-2017

Acts Referred:
Income Tax Act, 1961, Section 226(3), Section 226(3), Section 226(3), Section 226(3) - Other modes of recovery

Citation : (2017) 03 MAD CK 0041

Hon'ble Judges : Ravichandrabaabu

Bench : SINGLE BENCH

Advocate : Ravichandrabaabu

Final Decision : Allowed

Judgement

1. Mr.S.Rajesh, learned Standing Counsel takes notice for the 1st respondent. The 2nd and 3rd respondents are only garnishees and that the

impugned attachment orders were issued attaching the amount available with those garnishees and payable to the petitioner, by issuing notice under

Section 226(3) of the Income Tax Act.

2. Heard both sides. Since the writ petition is being disposed of after hearing the petitioner as well as the contesting respondent namely the 1 st

respondent, notice to the 2 nd and 3 rd respondents is dispensed with.

3. The petitioner is the Central Co-operative Bank registered with the Registrar of Co-operative Societies, Tindivanam, and carrying on business

of Banking under the license granted by the Reserve Bank of India. The petitioner''s Co-operative Society was assessed to Income Tax for the

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assessment years 2008-09 to 2012-13. The petitioner challenged such order of assessment before the Commissioner of Income tax (Appeals)

Pondicherry. The Appellate Authority dismissed the appeals on 23.03.2017. However, in the meantime, the impugned attachment notices are

issued on the respondents 2 and 3. The main grievance of the petitioner is that when the First Appellate Authority has passed the order dismissing

the Appeal only on 20.03.2017 and served on the petitioner only on 23.03.2017 and when the petitioner is having sufficient time under the statute

to file further appeal before the Income Tax Appellate Tribunal, the 1st respondent is not justified in issuing the order of attachment impugned in

this writ petition thereby indirectly affecting the right of the petitioner in moving the stay petition before the Tribunal while preferring the Appeal

challenging the order of the Appellate Authority. He further pointed out that in pursuant to the impugned order of attachment, a sum of

Rs.1,51,07,000/- was already debited to the account of the 1st respondent by the State Bank of India, Pondicherry, who is the 2 nd respondent

herein, as evident from the communication of the 2nd respondent dated 22.03.2017.

Learned counsel for the petitioner further submitted that as the petitioner is a Co-operative Society and has to discharge their day today affairs only

by operating the bank accounts, the attachment causes great inconvenience and hardship to all the members of the Society.

4. Per contra, learned counsel for the 1 st respondent submitted that the petitioner, having suffered an order of dismissal of the appeals by the First

Appellate Authority, ought to have challenged the same before the Tribunal in the manner known to law and without doing so, the petitioner cannot

approach this Court and challenge the impugned order.

5. It is not in dispute that the petitioner Co-operative Bank, after suffering an order of assessment, has preferred an Appeal before the First

Appellate Authority namely, the Commissioner of Income Tax (Appeals) Pondicherry, who in turn dismissed such Appeal only on 20.03.2017, by

serving a copy of the same on the petitioner only on 23.03.2017. It is also evident that the 1st respondent, in the meantime, has issued the

impugned attachment order as on 21.03.2017, i.e., just immediately a day after the disposal of the appeal by the Appellate Authority, without even

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waiting for the petitioner to approach the Tribunal and seek for appropriate interim relief while filing the Appeal challenging the order of the First

Appellate Authority. It is also seen from the proceedings of the 2 nd respondent dated 22.03.2017 that in pursuant to the impugned order of

attachment, a sum of Rs.1,51,07,000/- was also debited from the account of the petitioner to the credit of the 1st respondent.

6. Needless to say that this Court, at this stage, cannot go into the correctness or otherwise of the order of attachment as confirmed by the

Appellate Authority, as the petitioner is still having further remedy of Appeal before the Income Tax Appellate Tribunal as provided under the

statute itself. It is also not in dispute that the petitioner is entitled to seek for interim relief of stay of the proceedings while preferring the appeal and

it is for the Tribunal to consider such request and pass orders on the same on its own merits and in accordance with law. But in the meantime, in

pursuant to the order of attachment, already a sum of Rs.1,51,07,000/- was debited from the account of the petitioner. Therefore, in all fairness,

the 1 st respondent has to wait till the Income Tax Appellate Tribunal passes an order on the stay petition to be filed by the petitioner while

preferring the appeal.

7. Considering the above stated facts and circumstances and considering the fact that already a sum of Rs.1,51,07,000/- has been debited from

the account of the petitioner, the Writ Petition is allowed and the impugned order of attachment is set aside, subject to the following conditions.

(a) The petitioner shall prefer an Appeal before the Income Tax Appellate Tribunal within a period of 30 days from the date of receipt of a copy of

this order along with a stay petition.

(b) Such Stay Petition filed by the petitioner shall be taken up by the Income Tax Appellate Tribunal and decided on its own merits and in

accordance with law within a period of 7 days from the date of such filing.

(c) As this Court has allowed the writ petition and raised the order of attachment, the 1st respondent has to wait for the order to be passed in the

Stay petition for further action.

No costs. Consequently, connected miscellaneous petitions are closed.

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