IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.11.2016

CORAM :

THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN

W.P No.40825 of 2016
and WMP Nos.34821 to 34823 of 2016

Smt.Latha Sundar ... Petitioner

Vs

1.The Income Tax Officer,
Non-Corporate Ward 8(4)
5th Floor, Annex Building
121, Mahatma Gandhi Road,
Nungambakkam, Chennai - 600 034.

2.The Commissioner of Income Tax (Appeals) I,
121, Mahatma Gandhi Road,
Chennai - 600 034. ... Respondents

Writ Petition is filed under Article 226 of the constitution for issuance of writ of certiorarified mandamus calling for the records of the 1st respondent in proceedings no.Nil dt.31.10.2016 and quash the notice u/s.226 (3) of the Income Tax Act, 1961 issued therein and further direct the 1st respondent to refund the sum of RS.10,568/- collected by them from the petitioner's bank account No.05280200000258 lying with the Bank of Baroda, Mount Road, Chennai.

For Petitioner : Mr.P.Gnanasekaran

For Respondents: Mr.T.Pramod Kumar Chopda
Senior Standing Counsel for IT

O R D E R

The petitioner is an income tax assessee and assessment for the year 2010-2011 was processed under Section 143(1) and the same was taken for scrutiny and assessment u/s. 143 (3) was completed vide order dated 19.09.2011. Thereafter, notice for re-opening of the assessment was issued by the first respondent on the ground that the petitioner had claimed excess depreciation and that TDS had been deducted on a higher amount by the assessee's paye. The petitioner filed her objection for re-opening of assessment and thereafter a revised assessment order u/s 147 of the Act has been passed by the assessment officer on 31.03.2016. Against the revised assessment order, the petitioner has filed an appeal before the very same assessment officer on 10.08.2016 and so far, the stay petition has not been disposed of. Meanwhile, a demand notice has been issued by the respondent which dated 30.10.2016. Challenging the same, the petitioner has come before this Court.

2. Heard Mr.P.Gnanasekaran, learned counsel appearing for the petitioner and Mr.T.Pramad Kumar Chopda, learned Senior Standing Counsel who accepts notice on behalf of the respondents.

3. Under the Income Tax Act, if the assessee files appeal against the assessment order, the very same assessment officer has got powers to stay it. It is seen that so far, no order has been passed by the assessment officer in the stay petition filed by the petitioner.

4. In view of the above, the concerned assessment officer is directed to dispose of the stay petition filed by the petitioner, within a period of four (4) weeks from the date of receipt of a copy of this order. Till such time, the impugned order is directed to be kept in abeyance.

5. With the above direction, this writ petition is disposed of. No costs. Consequently, connected W.M.Ps are closed.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

To

1.The Income Tax Officer,
Non-Corporate Ward 8(4)
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Nungambakkam,
Chennai - 600 034.

2.The Commissioner of Income Tax (Appeals) I,
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+1 cc to Mr.T.Pramod Kumar Chopda Advocate sr 67320

W.P No.40825 of 2016

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