IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.04.2018

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THE HONOURABLE Mr.JUSTICE T.S.SIVAGNANAM

W.P.No.5794 of 2018
&
W.M.P.Nos.7129 to 7131 of 2018

Sarrangan Ashok ... Petitioner

Vs.

1.Commissioner of Income Tax (Appeals) - 15
Aayakar Bhavan
M.G.Road, Nungambakkam
Chennai - 600 034

2.The Principal Commissioner of Income Tax-6, Chennai
M.G.Road, Nungambakkam
Chennai - 600 034

3.The Income Tax Officer
Non-Corporate Ward 15(1)
Chennai - 600 034 ...Respondents

Prayer: Writ Petitions filed under Article 226 of Constitution of India, to issue a Writ of Certiorarified Mandamus calling for the records on the file of the second respondent in C.No.6102/stay/PCIT-6/2017-18 passing the impugned order dated 02.03.2018 rejecting the stay petition filed by the petitioner for stay of demand for the Assessment year 2015-16; quash the same as illegal, arbitrary and devoid of merit and consequently direct the second respondent to grant stay of demand pending disposal of the appeal before the first respondent.

For Petitioner : Mr.R.Sivaraman

For Respondent : Mr.A.P.Srinivas

O R D E R

Heard Mr.R.Sivaraman, learned counsel for the petitioner and Mr.A.P.Srinivas, learned senior standing counsel for the respondent.

2.The petitioner is before this Court challenging an order passed by the second respondent, the Principal Commissioner of Income Tax-6, Chennai dated 02.03.2018, by which stay petition filed by the petitioner seeking stay of the demand made pursuant to the order of assessment dated 29.12.2017 of the Assessment Year 2015-16 was rejected. On a reading of the impugned order it is seen that the second respondent has not assigned any reason for rejecting the stay petition, but on the only ground that first appeal before the CIT (A) is pending. In my considered view, the manner in which the impugned order has been passed cannot be countenanced.

3.The petitioner earlier approached the Assessment Officer and filed an application for grant of stay of the demand or in other words not to treat the petitioner as assessee in default. The Assessing Officer, by order dated 05.02.2018 following the Office Memorandum issued by the Central Board of Direct Taxes (CBDT) dated 31.07.2017, directed the petitioner to pay 20% of the demand for grant of stay of the balance amount. The petitioner did not comply with the said order, but filed another stay petition before the Assessing Officer on 15.02.2018 for the same relief. By reply dated 23.02.2018, the Assessing Officer has stated that he does not have inherent power to review his earlier decision dated 05.02.2018, but pointed out that in terms of Office Memorandum dated 29.02.2016 in a case where stay of demand is granted by the Assessing Officer on payment of 15% of the disputed demand and the assessee is still aggrieved, he may approach the jurisdictional administrative Principal CIT/CIT for a review of the decision of the assessing officer. With the reply sent by the Assessing Officer, the petitioner approached the second respondent by way of a petition dated 28.02.2018 requesting for grant of stay. Unfortunately, the said application has been rejected by a single line order.

4. When the guidelines issued by the CBDT provide for a remedy that an assessee can approach the jurisdictional administrative Principal CIT/CIT for a review of the decision of the assessing officer, such power should be exercised by the authority in accordance with law and not in the manner as done in the impugned order. The petitioner is aggrieved by the order passed by the Assessing Officer directing payment of 20% of the disputed demand of tax. Therefore, the minimum that is required to be considered is whether the petitioner/assessee has made out any ground for reviewing the order passed by the Assessing Officer. At least to that extent, there is a necessity for application of mind and reasons to be recorded, however brief it may be. I find that the impugned order does not contain any reasons except to state that petitioner's appeal is pending before the CIT(A). This cannot be a reason for rejecting a stay petition. In the light of the above, the impugned order calls for interference.

5. Learned counsel for the petitioner has submitted that the appeal filed by the petitioner before the CIT(A) against the order of Assessment dated 29.12.2017 is posted for hearing on 26.04.2018. Therefore, the best course to be adopted by the petitioner is to move the Appellate Authority by way of a stay petition.

6. In the light of the above discussion, the writ petition is allowed and the impugned order dated 02.03.2018 is set aside and the petitioner is directed to file a stay petition before the CIT (A) in the pending appeal and the CIT(A) shall take up the stay petition at the first instance or along with the appeal which is said to be posted on 26.04.2018 and take a decision on merits and in accordance with law. Till such decision is taken by the first respondent, no coercive action shall be initiated against the petitioner. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

gpa

To

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+1cc to Mr.A.P.Srinivas, Advocate, S.R.No.25761
+1cc to Mr.R.Sivaraman, Advocate, S.R.No.25249

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NRI(CO)
RRK(02/05/2018)