IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.09.2018

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THE HONOURABLE MR.JUSTICE K.RAVICHANDRABAABU

Writ Petition No.25069 of 2018
and
WMP Nos.29132 & 29133 of 2018

S.Jagan
Authorized Representative and
Legalhier of Late J.Sekar
Flat No.15C-8, No.5/9
3rd Floor, Lotus Apartment
Kuppuswamy Street, Chennai-600 017. ..Petitioner

Vs.

1. The Commissioner of Income Tax (Appeals)-18.
Chennai
Room No.303, Investigating Wing, New No.46
(Old No.108), M.G.Road, Nungambakkam,
Chennai-600 034.

2. The Assistant Commissioner of Income Tax
Central Circle-2(1), Chennai
M.G.Road, Nungambakkam,
Chennai-600 034. ..Respondents

Writ petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorari, calling for the records on the file of the first respondent in PAN ARAPS7615N passing the order dated 06.09.2018 rejecting the stay application filed by the petitioner for stay of demand for the assessment years 2009-2010 to 2015-2016, quash the same as illegal arbitrary and devoid of merit.

For Petitioner : Mr.R.Sivaraman
For Respondents : Mr.A.P.Srinivas standing counsel

O R D E R

This writ petition is filed challenging the order of the first respondent dated 06.09.2018, vacating the stay already granted on 07.08.2018 with further direction to pay 20% of the disputed demand and by granting stay for the rest of the demand till the disposal of the first appeal.

2. The petitioner is an individual and an Assessee before the second respondent. In respect of the assessment years 2009-2010 to 2015-2016, the Assessing Officer has completed the assessment under Section 143(3) r/w 153A of the Income Tax Act, 1961, on 30.12.2016, by making several additions. Challenging the said orders of assessment, the petitioner went on appeal before the first respondent/first Appellate Authority. Pending disposal of the appeal, the petitioner, as the appellant before the first respondent, sought for stay of collection of disputed demand for the above assessment years. The first respondent disposed the stay petition, by passing an order on 07.08.2018, thereby granting stay of collection of 100% tax on a condition that the appeal will be taken up for early hearing and thus, on 06.09.2018 at 3.30 p.m. and further by indicating that in case of failure of the appellant to appear/attend on the said date, the stay will automatically stand vacated. Thereafter, the present impugned order is passed on 06.09.2018 on the reason that the authorized representative of the Assessee appeared on 06.09.2018 and only sought time to present the case. In other words, it is case of the first respondent that the Assessee, instead of co-operating for the disposal of the appeal on 06.09.2018, sought time to present the case, which act was against the condition imposed by the first respondent while granting 100% stay on 07.08.2018. The petitioner in the affidavit filed in support of the writ petition, however, stated that the authorized representative of the petitioner appeared on 06.09.2018 at 3.30 p.m. before the first respondent and was ready with his submission and however, it is only at the instance of the first respondent, time was sought by the authorized representative.

3. On the other hand, Mr.A.P.Srinivas, learned standing counsel for the respondents, based on instructions, submitted that the Assessee was not co-operating for disposal of the appeal on the stipulated date and therefore, the first respondent was left with no other option, except to modify the earlier order of stay dated 07.08.2018, with a fresh condition to pay 20% of the disputed demand, pending disposal of the appeal.

4. Mr.R.Sivaraman, learned counsel for the petitioner, after reiterating the stand taken by the petitioner in the affidavit filed in support of the writ petition as stated supra, has submitted that the Assessee is ready to argue the appeal at any day, as fixed by this Court and therefore, there is no question of dragging the matter, as alleged by the first respondent. He further submitted that once the first respondent has chosen to grant 100% stay, he is not justified in modifying the same on the reason set

out in the impugned proceedings, especially, when such reason is factually incorrect.

5. Heard both sides.

6. It is seen that the petitioner challenged the orders of assessment passed in respect of the assessment years 2009-2010 to 2015-2016 before the first respondent, by way of filing statutory appeal. It is also not in dispute that in the application filed by the petitioner before the first respondent for stay pending appeal, an order came to be passed on 07.08.2018, granting 100% stay, however, subject to the condition that the Assessee should appear on 06.09.2018 at 3.30 p.m. for taking up the appeal for early hearing on out of turn basis. Now, with regard to the factum of readiness of the Assessee to go head with the appeal on 06.09.2018, there are two versions, contradicting each other as stated supra. I do not think that it is required to go into such disputed question and give a finding on the same, especially, when it is stated before this Court that the petitioner is ready and willing to appear on the day fixed by this Court and co-operate for the disposal of the appeal.

7. Considering the fact that the first respondent, while considering the stay petition, at the first instance, has originally granted 100% stay and considering the fact that the petitioner is also ready to co-operate for the disposal of the appeal within the time stipulated by this Court, I am of the view that the interest of justice would be met, if this writ petition is disposed of in the following manner:

(a) This writ petition is allowed and the impugned order is set aside. Consequently, the first respondent is directed to take up the appeal on 03.10.2018 and dispose of the same on merits and in accordance with law, after giving due opportunity of hearing to the petitioner.

(b) The petitioner is directed to appear before the first respondent on the said day i.e. on 03.10.2018, either by himself or through his authorized representative, without fail and co-operate with the first respondent for the disposal of the appeal without seeking adjournment.

(c) If the petitioner or his authorized representative fails to appear before the first respondent on the said day for any reason, the order impugned in this writ petition stands restored.

No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS iv)

//True Copy//

Sub Assistant Registrar

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To

1. The Commissioner of Income Tax (Appeals)-18.
Chennai
Room No.303, Investigating Wing, New No.46
(Old No.108), M.G.Road, Nungambakkam,
Chennai-600 034.

2. The Assistant Commissioner of Income Tax
Central Circle-2(1), Chennai
M.G.Road, Nungambakkam,
Chennai-600 034.

+1cc to Mr.A.P.Srinivas , Advocate SR.No. 66825
+1cc to Mr. Mr.R.Sivaraman, Advocate SR.No. 66946

W.P.No.25069 of 2018

ASK(28/09/2018)