

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.12.2018

CORAM

THE HON'BLE MR. JUSTICE K.RAVICHANDRABAABU

W.P.No.33800 of 2018

and

W.M.P.Nos.39257 & 39261 of 2018

Archit Khemka

... Petitioner

vs.

1.The Principal Commissioner of Income Tax-1
121, Mahatma Gandhi Road,
Nungambakkam,
Chennai - 600 034.

2.The Deputy Commissioner of Income Tax,
Corporate Circle - 1 (1),
121, Mahatma Gandhi Road,
Nungambakkam,
Chennai - 600 034.

3.The Commissioner of Income Tax (Appeals) -1
121, Mahatma Gandhi Road,
Nungambakkam,
Chennai - 600 034.

.... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, calling for the records in PAN: AMJPA0973F and quash the impugned order in C.No.233/Pr.CIT-1/2018-19 dated 05.12.2018 passed by the first respondent rejecting the stay petition filed by the petitioner for stay of demand for the Assessment Year 2012-13 as illegal, arbitrary and devoid of merit and consequently direct the first respondent to grant stay for the proceedings in C.No.DCIT/Cor.Cir.1(1)/Recovery/ F.Y.2016-17 dated 22.02.2017 till the disposal of the appeal before the third respondent.

For Petitioner : Mr.R.Sivaraman

For Respondents : Mr.Naveen Durai Babu,
Standing Counsel

ORDER

Mr.Naveen Durai Babu, learned Standing Counsel takes notice for the respondents. By consent, this writ petition is taken up for final disposal at the stage of admission itself.

2. The petitioner is aggrieved against the order of the first respondent dated 05.12.2018, in rejecting the assessee's application dated 09.11.2018, seeking for stay of demand of disputed taxes till the disposal of the appeal by the CIT (A) -1.

3. Heard Mr.R.Sivaraman, learned counsel appearing for the petitioner and Mr.Naveen Durai Babu, learned Standing Counsel appearing for the respondents.

4.The second respondent/ Assessing Officer passed an order of assessment under Section 143 (3) of the Income Tax Act, 1961 on 26.03.2015, in respect of the assessment year 2012-13. Aggrieved over the said order, the petitioner preferred an appeal before the 3rd respondent on 07.04.2015. The petitioner also filed the stay petition before the second respondent/Assessing Officer on 06.05.2015, seeking to stay the recovery of the disputed tax demand till the disposal of the appeal before the third respondent. The second respondent, however passed an order on 22.02.2017, calling upon the petitioner to pay 15% of the tax demand. Thus, the petitioner preferred an application before the first respondent seeking for stay of demand of entire disputed tax. The first respondent, however rejected the application by a single line order stating "Petition rejected. AO to collect eligible demand." Hence, the present writ petition is filed before this Court.

5.The learned counsel for the petitioner contended that when the appeal filed against the order of the assessment is still pending before the third respondent/Appellate Authority, the order of the first respondent in rejecting the stay petition, that too, with a further direction to the Assessing Officer to collect the demand, is totally unreasonable and unjustifiable. He further contended that under similar circumstances, in an order made in W.P.No.5794 of 2018 dated 05.04.2018, this Court set aside the order passed by the Principal Commissioner of Income Tax and permitting the assessee to file a stay petition before the Appellate Authority.

6.The learned Standing Counsel appearing for the respondents submitted that since the petitioner has not filed any stay petition before the Appellate Authority and failed to pay 15% of the tax liability as demanded by the Assessing Officer, the order of the Principal Commissioner cannot be found fault with.

7.It is seen that as against the order of assessment, the petitioner has filed an appeal before the CIT (A) and the same is pending. Therefore, it is evident that the order of assessment has not reached its finality. Needless to say that the petitioner is entitled to file stay petition before the Appellate Authority and canvas all the points in support of their stay petition. The similar view is expressed by the learned Judge of this Court in W.P.No.5794 of 2018 dated 05.04.2018. However, in this case, they have gone before the Principal Commissioner viz., the first respondent herein and sought for stay, who unfortunately rejected the petition by a single line order, without stating any reason or finding as to why the application is liable to be rejected. Therefore, I find that the said order of the first respondent cannot be sustained. However, this Court is not inclined to remit the matter back to the first respondent for considering the petition once again, since the petitioner is entitled to file such stay petition before the Commissioner of Income Tax (Appeal) himself, where the appeal is admittedly pending.

7.Accordingly, this writ petition is allowed and the impugned order is set aside. Consequently, the petitioner is directed to file a stay petition before the Commissioner of Income Tax (Appeals) in the pending appeal within a period of two weeks from the date of receipt of a copy of this order. If any such application is filed, the CIT (A) shall take up the same and dispose at first instance on merits and in accordance with law within a period of four weeks thereafter. Till such decision is taken by the Appellate Authority, no coercive action shall be taken against the petitioner. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

gsi/vri

To

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121, Mahatma Gandhi Road,
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Chennai - 600 034.

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+1 cc to M/s.Hema Muralikrishnan, Advocate SR.No.88767

W.P.No.33800 of 2018

MR (CO)
CSL/23.01.2019



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