



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.03.2019

CORAM :

THE HONOURABLE DR.JUSTICE ANITA SUMANTH

W.P.Nos.7764, 7773, 7778, 7787, 7789 & 7790 of 2019
and

W.M.P.Nos.8397, 8399, 8401 to 8404, 8406, 8408, 8415, 8418,
8419, 8421, 8423, 8425 to 8435 of 2019

KISHORE KUMAR,
S/O.PUKHRAJJI,
NO.16, NSC BOSE ROAD,
SOWCARPET, CHENNAI 600 079.

... Petitioner
in W.P.No.7764 of 2019

SHANU JAIN,
W/O.PRASHANT KIRAN,
65, NSC BOSE ROAD,
SOWCARPET, CHENNAI - 600 079.

... PETITIONER in WP No.7773 of 2019

PRASHANT KIRAN,
S/O.ASHOK KUMAR JAIN,
65, NSC BOSE ROAD,
SOWCARPET, CHENNAI - 600 079.

... PETITIONER in WP No.7778 of 2019

BHAWESH KIRAN,
S/O.ASHOK KUMAR JAIN,
65, NSC BOSE ROAD
SOWCARPET, CHENNAI - 600 079.

... PETITIONER in WP No.7787 of 2019

ASHOK KUMAR JAIN,
S/O.PUKHRAJJI,
60-A, MARUTHI COMPLEX,
2ND FLOOR, NARASIMHADASAI LANE,
NSC BOSE ROAD,
SOWCARPET, CHENNAI - 600 079.

... PETITIONER in WP No.7789 of 2019



BAI RATAN,
W/O.ASHOK KUMAR JAIN,
65, NSC BOSE ROAD,
SOWCARPET, CHENNAI - 600 079.

... PETITIONER in WP No.7790 of 2019

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Vs.

- 1 THE ASSISTANT COMMISSIONER OF INCOME TAX,
CENTRAL CIRCLE-(1)3,
INVESTIGATION WING, ROOM NO.312, NEW NO.46,
MAHATMA GANDHI ROAD, NUNGAMBAKKAM,
CHENNAI - 600 034.
- 2 COMMISSIONER OF INCOME TAX (APPEALS)-18,
121, MAHATMA GANDHI ROAD,
NUNGAMBAKKAM, CHENNAI - 600 034.
- 3 M/S.HDFC BANK,
REPRESENTED BY ITS BRANCH MANAGER,
NO.68, GROUND FLOOR, MINT STREET,
SOWCARPET, CHENNAI - 600 079.
- 4 M/S.INDIAN OVERSEAS BANK,
SOWCARPET BRANCH,
REPRESENTED BY ITS BRANCH MANAGER,
DAVEY COMPLEX, FIRST FLOOR, 143,
NSC BOSE ROAD, CHENNAI - 600 079.

.. Respondents in WP.NO.7764, 7787, 7789 of 2019

- 1 THE ASSISTANT COMMISSIONER OF INCOME TAX,
CENTRAL CIRCLE-(1)3,
INVESTIGATION WING, ROOM NO.312, NEW NO.46,
MAHATMA GANDHI ROAD, NUNGAMBAKKAM,
CHENNAI - 600 034.
- 2 COMMISSIONER OF INCOME TAX (APPEALS)-18,
121, MAHATMA GANDHI ROAD,
NUNGAMBAKKAM, CHENNAI - 600 034.
- 3 M/S.INDIAN OVERSEAS BANK,
SOWCARPET BRANCH,
REPRESENTED BY ITS BRANCH MANAGER,
DAVEY COMPLEX, FIRST FLOOR, 143,
NSC BOSE ROAD, CHENNAI - 600 079.

.. Respondents in WP.NO.7773, 7790 of 2019



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- 1 THE ASSISTANT COMMISSIONER OF INCOME TAX,
CENTRAL CIRCLE-(1)3,
INVESTIGATION WING, ROOM NO.312, NEW NO.46,
MAHATMA GANDHI ROAD, NUNGAMBAKKAM,
CHENNAI - 600 034.
- 2 COMMISSIONER OF INCOME TAX (APPEALS)-18,
121, MAHATMA GANDHI ROAD,
NUNGAMBAKKAM, CHENNAI - 600 034.
- 3 M/S.HDFC BANK,
REPRESENTED BY ITS BRANCH MANAGER,
NO.68, GROUND FLOOR, MINT STREET,
SOWCARPET, CHENNAI - 600 079.

.. Respondents in WP.NO.7778 of 2019

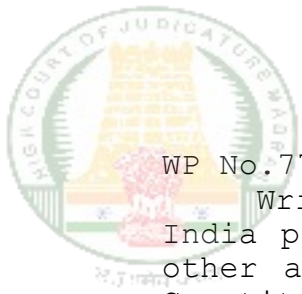
PRAYERS:-

W.P.No.7764 of 2019:-

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records on the file of the 1st respondent in PAN:AAKPK1942R in passing the impugned order in F.No.:CC-1(3)/AAKPK1942R/2018-19 dated 19.02.2019 along with impugned notices in AAKPK1942R/2018-19 dated 07.02.2019 issued to the 3rd and 4th respondents and quash the same as illegal, arbitrary and devoid of merit and consequentially direct the 1st respondent to grant stay of all further recovery proceedings pertaining to the AY 2011-12 pending disposal of the appeal preferred by the Petitioner before the 2nd respondent.

WP No.7773 of 2019:-

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus or any other appropriate writ application or order Article 226 of the Constitution of India Calling for the records on the file of the 1st respondent in PAN.AFUPJ5665F in passing the impugned order in F.No.CC-1(3)/AFUPJ5665F/2018-19 dated 19.02.2019 along with impugned notices in AFUPJ5665F/2018-19 dated 07.02.2019 issued to the 3rd respondent and quash the same as illegal, arbitrary and devoid of merit and consequentially direct the 1st respondent to grant stay of all further recovery proceedings pertaining to the AY 2013-14 pending disposal of the appeal preferred by the petitioner before the 2nd respondent.



WP No.7778 of 2019:-

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus or any other appropriate writ application or order Article 226 of the Constitution of India Calling for the records on the file of the 1st respondent in PAN.AAGPP6135R in passing the impugned order in F.No.CC-1(3)/AAGPP6135R/2018-19 dated 19.02.2019 along with impugned notices in AAGPP6135R/2018-19 dated 07.02.2019 issued to the 3rd and 4th respondents and quash the same as illegal, arbitrary and devoid of merit and consequentially direct the 1st respondent to grant stay of all further recovery proceedings pertaining to the AY 2013-14 pending disposal of the appeal preferred by the petitioner before the 2nd respondent.

WP.No.7787 of 2019:-

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus or any other appropriate writ application or order Article 226 of the Constitution of India Calling for the records on the file of the 1st respondent in PAN.AAFPB3609P in passing the impugned order in F.No.CC-1(3)/ AAFPB3609P /2018-19 dated 19.02.2019 along with impugned notices in AAFPB3609P /2018-19 dated 07.02.2019 issued to the 3rd and 4th respondents and quash the same as illegal, arbitrary and devoid of merit and consequentially direct the 1st respondent to grant stay of all further recovery proceedings pertaining to the AY 2013-14 pending disposal of the appeal preferred by the petitioner before the 2nd respondent.

WP.No.7789 of 2019:-

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus or any other appropriate writ application or order Article 226 of the Constitution of India Calling for the records on the file of the 1st respondent in PAN.AAFPA3456M in passing the impugned order in F.No.CC-1(3)/ AAFPA3456M /2018-19 dated 19.02.2019 along with impugned notices in AAFPA3456M /2018-19 dated 07.02.2019 issued to the 3rd and 4th respondents and quash the same as illegal, arbitrary and devoid of merit and consequentially direct the 1st respondent to grant stay of all further recovery proceedings pertaining to the AY 2011-12 pending disposal of the appeal preferred by the petitioner before the 2nd respondent.

WP.No.7790 of 2019:-

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus or any other appropriate writ application or order Article 226 of the Constitution of India Calling for the records on the file of the



1st respondent in PAN.AAFP3498Q in passing the impugned order in F.No.CC-1(3)/ AAFFB3498Q /2018-19 dated 19.02.2019 along with impugned notices in AAFFB3498Q /2018-19 dated 07.02.2019 issued to the 3rd respondent and quash the same as illegal, arbitrary and devoid of merit and consequentially direct the 1st respondent to grant stay of all further recovery proceedings pertaining to the AY 2013-14 pending disposal of the appeal preferred by the petitioner before the 2nd respondent.

For Petitioner : Mr.R.Sivaraman
For Respondents : Mr.A.P.Srinivas (for R1 & R2)
Senior Standing counsel

COMMON ORDER

This common order is passed in relation to all the above Writ Petitions insofar as the relevant facts and circumstances are identical. Final orders are passed after hearing Mr.R.Sivaraman, learned counsel for the petitioner and Mr.A.P.Srinivas, learned senior standing counsel, who have taken notice on behalf of respondents 1 & 2, by consent expressed by both of them, for final disposal of the matters at the stage of admission.

2.The writ petitioners have challenged orders passed by the Assistant Commissioner of Income Tax, Central Circle-1(3), the 1st respondent herein, dated 19.02.2019. Orders of assessments under the Provisions of the Income Tax Act, 1961 have been passed in the case of the petitioners, consequent upon search and seizure action conducted on 17.02.2016. The assessments are stated to be pending in appeal. While this is so, the petitioners have filed applications for stay of the demand of tax on 18.02.2019 before the 1st respondent. The applications set out, in some detail, the prima facie case in appeal.

3.The impugned orders have been passed rejecting the said applications and are identical in all cases. The order passed in respect of the petition in W.P.No.7764 of 2019 is extracted below:

"Ref: Your petition received in this office on 18.02.2019.

Please refer to your petition cited in the reference, wherein you have requested for stay on



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collection of taxes for the A.Y. 2011-12. In this connection, it is to inform that the request cannot be acceded to, as you have not paid any taxes. Therefore, the petition is hereby rejected. However, your request for stay can be considered subject to payment of 20% of the demand raised. Your compliance in this regard may reach the undersigned before 25.02.2019. In case, there is no response within the said date & time, steps will be taken to recover the entire demand."

4. The manner of disposal of applications seeking stay has been considered by me in my order dated 13.02.2019, passed in WP.No.3849 of 2019. The relevant portion of the order below:

'7. The parameters to be taken into account in considering the grant of stay of disputed demand are well settled - the existence of a prima facie case, financial stringency and the balance of convenience. 'Financial stringency' would include within its ambit the question of 'irreparable injury' and 'undue hardship' as well. It is only upon an application of the three factors as aforesaid that the assessing officer can exercise discretion for the grant or rejection, wholly or in part, of a request for stay of disputed demand.

8. In addition, periodic Instructions/Circulars in regard to the manner of adjudication of stay petitions are issued by the Central Board of Direct Taxes (CBDT) for the guidance of the Departmental authorities. The one oft-quoted by the assessee is Office Memorandum F.No.1/6/69/-ITCC, dated 21.08.1969 that states as follows:

'1. One of the points that came up for consideration in the 8th Meeting of the Informal Consultative Committee was that income-tax assessments were often arbitrarily pitched at higher figures and that the collection of disputed demand as a result thereof was also not stayed in spite of the specific provision in the matter in s. 220(6) of the IT Act, 1961.

2. The then Deputy Prime Minister had observed as under :

".....Where the income determined on assessment was substantially higher than the returned income, say twice the latter amount or more, the collection of the tax in dispute should be held in abeyance till the decision on the appeal provided there were no lapses



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on the part of the assesseees."

3. The Board desire that the above observations may be brought to the notice of all the Income-tax Officers working under you and the powers of stay of recovery in such cases up to the stage of first appeal may be exercised by the Inspecting Assistant Commissioner/Commissioner of Income-tax.'

9. Thereafter, Instruction No.1914 was issued by the CBDT on 21.03.1996 and states as follows:

1. Recovery of outstanding tax demands

[Instruction No. 1914 F. No. 404/72/93 ITCC dated 2-12-1993 from CBDT]

The Board has felt the need for a comprehensive instruction on the subject of recovery of tax demand in order to streamline recovery procedures. This instruction is accordingly being issued in supersession of all earlier instructions on the subject and reiterates the existing Circulars on the subject.

2. The Board is of the view that, as a matter of principle, every demand should be recovered as soon as it becomes due. Demand may be kept in abeyance for valid reasons only in accordance with the guidelines given below :

A. Responsibility:

i. It shall be the responsibility of the Assessing Officer and the TRO to collect every demand that has been raised, except the following: (a) Demand which has not fallen due; (b) Demand which has been stayed by a Court or ITAT or Settlement Commission; (c) Demand for which a proper proposal for write-off has been submitted; (d) Demand stayed in accordance with paras B & C below.

ii. Where demand in respect of which a recovery certificate has been issued or a statement has been drawn, the primary responsibility for the collection of tax shall rest with the TRO.

iii. It would be the responsibility of the supervisory authorities to ensure that the Assessing Officers and the TROs take all such measures as are necessary to collect the demand.



It must be understood that mere issue of a show cause notice with no follow-up is not to be regarded as adequate effort to recover taxes.

B. Stay Petitions:

i. Stay petitions filed with the Assessing Officers must be disposed of within two weeks of the filing of petition by the tax- payer. The assessee must be intimated of the decision without delay.

ii. Where stay petitions are made to the authorities higher than the Assessing Officer (DC/CIT/CC), it is the responsibility of the higher authorities to dispose of the petitions without any delay, and in any event within two weeks of the receipt of the petition. Such a decision should be communicated to the assessee and the Assessing Officer immediately.

iii. The decision in the matter of stay of demand should normally be taken by Assessing Officer/TRO and his immediate superior. A higher superior authority should interfere with the decision of the AO/TRO only in exceptional circumstances; e.g., where the assessment order appears to be unreasonably high-pitched or where genuine hardship is likely to be caused to the assessee. The higher authorities should discourage the assessee from filing review petitions before them as a matter of routine or in a frivolous manner to gain time for withholding payment of taxes.

C. Guidelines for staying demand:

i. A demand will be stayed only if there are valid reasons for doing so. Mere filing an appeal against the assessment order will not be a sufficient reason to stay the recovery of demand. A few illustrative situations where stay could be granted are:

It is clarified that in these situations also, stay may be granted only in respect of the amount attributable to such disputed points. Further where it is subsequently found that the assessee has not co-operated in the early disposal of appeal or where a subsequent pronouncement by a higher appellate authority or court alters the above situation, the stay order may be reviewed and modified. The above illustrations are, of course, not exhaustive.



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ii. In granting stay, the Assessing Officer may impose such conditions as he may think fit. Thus he may – a. require the assessee to offer suitable security to safeguard the interest of revenue; b. require the assessee to pay towards the disputed taxes a reasonable amount in lump sum or in instalments; c. require an undertaking from the assessee that he will co-operate in the early disposal of appeal failing which the stay order will be cancelled. d. reserve the right to review the order passed after expiry of a reasonable period, say up to 6 months, or if the assessee has not co-operated in the early disposal of appeal, or where a subsequent pronouncement by a higher appellate authority or court alters the above situations; e. reserve a right to adjust refunds arising, if any, against the demand.

iii. Payment by instalments may be liberally allowed so as to collect the entire demand within a reasonable period not exceeding 18 months.

iv. Since the phrase "stay of demand" does not occur in section 220(6) of the Income-tax Act, the Assessing Officer should always use in any order passed under section 220(6) [or under section 220(3) or section 220(7)], the expression that occurs in the section viz., that he agrees to treat the assessee as not being default in respect of the amount specified, subject to such conditions as he deems fit to impose.

v. While considering an application under section 220(6), the Assessing Officer should consider all relevant factors having a bearing on the demand raised and communicate his decision in the form of a speaking order.

D. Miscellaneous:

i. Even where recovery of demand has been stayed, the Assessing Officer will continue to review the situation to ensure that the conditions imposed are fulfilled by the assessee failing which the stay order would need to be withdrawn.

ii. Where the assessee seeks stay of demand from the Tribunal, it should be strongly opposed. If the assessee presses his application, the CIT should direct the departmental representative to request that the appeal be posted within a month



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so that Tribunal's order on the appeal can be known within two months.

iii. Appeal effects will have to be given within 2 weeks from the receipt of the appellate order. Similarly, rectification application should be decided within 2 weeks of the receipt thereof. Instances where there is undue delay in giving effect to appellate orders, or in deciding rectification applications, should be dealt with very strictly by the CCITs/CITs.

3. The Board desires that appropriate action is taken in the matter of recovery in accordance with the above procedure. The Assessing Officer or the TRO, as the case may be, and his immediate superior officer shall be held responsible for ensuring compliance with these instructions.

4. This procedure would apply mutatis mutandis to demands created under other Direct Taxes enactments also.'

10. Instruction 1914 was partially modified by Office Memorandum dated 29.02.2016 taking into account the fact that Assessing Officers insisted on payment of significant portions of the disputed demand prior to grant of stay resulting in extreme hardship for tax payers. Thus, in order to streamline the grant of stay and standardize the procedure, modified guidelines were issued which are as follows:

'.....

(A) In a case where the outstanding demand is disputed before CIT (A), the assessing officer shall grant stay of demand till disposal of first appeal on payment of 15% of the disputed demand, unless the case falls in the category discussed in pars (B) hereunder.

(B) In a situation where,

(a) the assessing officer is of the view that the nature of addition resulting in the disputed demand is such that payment of a lump sum amount higher than 15% is warranted (e.g. in a case where addition on the same issue has been confirmed by appellate authorities in earlier years or the decision



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of the Supreme Court /or jurisdictional High Court is in favour of Revenue or addition is based on credible evidence collected in a search or survey operation, etc.) or,

(b) the assessing officer is of the view that the nature of addition resulting in the disputed demand is such that payment of a lump sum amount lower than 15% is warranted (e.g. in a case where addition on the same issue has been deleted by appellate authorities in earlier years or the decision of the Supreme Court or jurisdictional High Court is in favour of the assessee, etc.), the assessing officer shall refer the matter to the administrative Pr. CIT/ CIT, who after considering all relevant facts shall decide the quantum/ proportion of demand to be paid by the assessee as lump sum payment for granting a stay of the balance demand.'

11. Instruction 1914 was further modified by Office Memorandum bearing number F.No.404/72/93 - ITCC dated 31.07 2017 as follows:

'OFFICE MEMORANDUM F. No. 404/72/93-ITCC dated
31.07.2017

Subject: Partial modification of Instruction No. 1914 dated 21.3.1996 to provide for guidelines for stay of demand at the first appeal stage.

Reference: Board's O.M. of even number dated 29.2.2016

Instruction No.1914 dated 21.3.1996 contains guidelines issued by the Board regarding procedure to be followed for recovery of outstanding demand, including procedure for grant of stay of demand.

Vide O.M. NO.404/72/93-ITCC dated 29.2.2016 revised guidelines were issued in partial modification of instruction No 1914, wherein, inter alia, vide para 4 (A) it had been laid down that in a case where the outstanding demand is disputed before CIT(A), the Assessing Officer shall grant stay of demand till disposal of first appeal on payment of 15% of the disputed demand unless the case falls in the category discussed in para (B) thereunder. Similar references



to the standard rate of 15% have also been made in succeeding paragraphs therein.

2. The matter has been reviewed by the Board in the light of feedback received from field authorities. In view of the Board's efforts to contain over pitched assessments through several measures resulting in fairer and more reasonable assessment orders, the standard rate of 15% of the disputed demand is found to be on the lower side. Accordingly, it has been decided that the standard rate prescribed in O.M. dated 29.2.2016 be revised to 20% of the disputed demand, where the demand is contested before CIT(A). Thus all references to 15% of the disputed demand in the aforesaid O.M. dated 29.2.2016 hereby stand modified to 20% of the disputed demand. Other guidelines contained in the O.M. dated 29.2.2016 shall remain unchanged.

These modifications may be immediately brought to the notice of all officers working in your jurisdiction for proper compliance.'

12. The Circulars and Instructions as extracted above are in the nature of guidelines issued to assist the assessing authorities in the matter of grant of stay and cannot substitute or override the basic tenets to be followed in the consideration and disposal of stay petitions. The existence of a prima facie case for which some illustrations have been provided in the Circulars themselves, the financial stringency faced by an assessee and the balance of convenience in the matter constitute the 'trinity', so to say, and are indispensable in consideration of a stay petition by the authority. The Board has, while stating generally that the assessee shall be called upon to remit 20% of the disputed demand, granted ample discretion to the authority to either increase or decrease the quantum demanded based on the three vital factors to be taken into consideration.'

5. Even in the present case, the assessing authority has apparently not applied his mind to the cardinal factors that are relevant to the adjudication of stay petitions. The applications filed by the petitioners have been rejected on the sole ground that no portion of the disputed taxes have been remitted. The petitioners have been called upon to pay 20% of the demand under threat of recovery of the entire amount if there was no compliance of the direction to remit 20%.



6.The ingredients of existence of prima facie case, financial stringency and balance of convenience have not even been referred to. The impugned orders are thus set aside. The petitioners are directed to appear before the Assessing authority on 25.03.2019 at 10.30 am. Speaking orders be passed by the 1st respondent/assessing authority on the applications for stay after hearing the petitioners and considering all materials placed by them in support of their request for stay, within a period of two weeks thereafter (i.e.,) on or before 08.04.2019.

7.The bank accounts of the petitioners are stated to be under attachment. Let the attachment continue, subject to the order to be passed in the stay applications. Let no further coercive steps be initiated till 08.04.2019 or till passing of order on stay applications, whichever is earlier.

8.These Writ Petitions are disposed of in the above terms. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

sai

To

1. The Assistant Commissioner of Income Tax,
Central Circle - (1) 3
Investigation Wing, Room No.312,
New No.46, Mahatma Gandhi Road,
Nungambakkam, Chennai 600 034.
2. Commissioner of Income Tax (Appeals) - 18
121, Mahatma Gandhi Road,
Nungambakkam, Chennai 600 034.
3. M/s.HDFC Bank,
Represented by its Branch Manager,
No.68, Ground Floor,
Mint Street, Sowcarpet, Chennai 600 079.



4. M/s.Indian Overseas Bank,
Sowcarpet Branch,
Represented by its Branch Manager,
Davey Complex, First Floor,
143, NSC Bose Road,
Chennai 600 079.

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+1cc to Mr.A.P.Srinivas, Advocate, S.R.No.25810
+6ccs to Mr.R.Sivaraman, Advocate, S.R.No.27085

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JP (CO)
CS/05/08/2019