IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.06.2019

CORAM :

THE HONOURABLE MR. JUSTICE T.S.SIVAGNANAM
and
THE HONOURABLE MRS. JUSTICE V.BHAVANI SUBBAROYAN

W.P.No.9628 of 2019
&
W.M.P.No.10241 of 2019

R.Dorairaj ...Petitioner

Vs.

1. The Income Tax Appellate Tribunal,
   A-3, II Floor, Rajaji Bhavan,
   Besant Nagar, Chennai - 600 090.

2. Commissioner of Income Tax (Appeals) - Puducherry,
   D.P.Thottam, Muthialpet, Puducherry - 605 003.

3. Assistant Commissioner of Income Tax,
   Cuddallore Circle, 4, Bharathi Road,
   Manjakuppam, Cuddalore - 607 001.

...Respondents

Writ Petition filed Under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus calling for the records pertaining to the Order of the first respondent passed in S.A.No.72/Chny/2019 dated 22.03.2019 and quash the same and direct the respondent Nos.2 and 3 not to recover the outstanding tax demand till the disposal of appeal before the respondent No.1.

For Appellant : N. Surya Senthil
For Respondents : Mr.A.P.Srinivas
Senior Standing Counsel

ORDER

[Order of the Court was made by T.S.SIVAGNANAM, J.]

We have heard Mr.N.Surya Senthil, learned counsel for the petitioner and Mr.A.P.Srinivas, learned Senior Standing Counsel for the respondents.

2. This writ petition has been filed the Order passed by the Income Tax Appellate Tribunal 'C' Bench, Chennai. In the stay petition filed, the assessee requested for stay of the demand of Rs.85,53,832/- being tax penalty for the assessment year 2015-16 as computed by the Assessing Officer in assessment order dated 12.12.2017. This order of assessment was confirmed by the Commissioner of Income Tax Appeals, Puducherry vide order dated 25.02.2019 against which appeal was preferred before the Tribunal by the petitioner/assessee. The Tribunal held that out of the total demand of Rs.83,53,832/-, the assessee has paid a sum of Rs.51,31,278/- and directed the balance amount to be paid in installments of Rs.3,00,000/- per month.

3. The issue would be as to whether the assessee is required to pay the entire amount of demand when the appeal is pending. It is true that the assessee should establish a prima facie case and should show a balance of conveyance in his favour and also establish that he will be put to irreperable hardship if the demand of entire tax and penalty would not be stayed before the Tribunal.

4. The three cardinal principles which are granted by Civil Courts while granting reliefs are equally applicable before the Quasi Judicial and Tribunal. During the pendency of this writ petition before this Court on account of certain technical errors, the assessee has paid a further sum of Rs.5,00,000/- and as on date, the assessee has paid Rs.60,31,279/- as against Rs.85,53,832/-.

5. In our considered view, this amount paid by the assessee would be sufficient to safeguard the interest of the Revenue.

6. In the result, the writ petition is partly allowed and the order and direction issued by the Tribunal is modified and the Tribunal is directed to reckon the payments effected upto date i.e., Rs.60,31,279/- to be sufficient to protect the interest of Revenue and the Tribunal may proceed to hear the appeal and decide on merits and in accordance with law.

7. In the result, this writ petition is partly allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(imp cell)

//True Copy//

Sub Assistant Registrar

To

1. The Income Tax Appellate Tribunal,
   A-3, II Floor, Rajaji Bhavan,
   Besant Nagar, Chennai - 600 090.

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3. Assistant Commissioner of Income Tax,
   Cuddallore Circle, 4, Bharathi Road,
   Manjakuppam, Cuddalore - 607 001.

+1cc to Mr.N. Surya Senthil , Advocate SR.No. 47421
+1cc to Mr. A.P.Srinivas, Advocate SR.No. 47046

W.P.No.9628 of 2019
&
W.M.P.No.10241 of 2019

A.SK(28/06/2019)