IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.04.2019

CORAM

THE HONOURABLE Dr. JUSTICE ANITA SUMANTH

Writ Petition No.10605 of 2019
& W.M.P.Nos.11097 & 11098 of 2019

G.Hemalatha .. Petitioner

vs.

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

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

3. The Commissioner of Income Tax (Appeals) - 18,
   121 Mahatma Gandhi Road, Nungambakkam,
   Chennai 600 034 .. Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus to call for the records in PAN: AHPPH1927B, quash the impugned order in C.No.1571/PCIT/C-1/24/18-19 dated 22.03.2019 passed by the first respondent rejecting the stay petition filed by the petitioner for stay of demand for the assessment year 2015-16 as illegal, arbitrary and devoid of merit and consequently to direct the first respondent to grant stay of recovery proceedings for the assessment year 2015-16 till the disposal of the Appeal before the third respondent.

For Petitioner : Mr. Veerabathran Prashanth,
for, Mr. R.Sivaraman

For Respondents : Mr. A.P.Srinivas,
Sr. Standing Counsel.

O R D E R

Mr.A.P.Srinivas, learned Senior Standing Counsel, takes notice for the respondents.

2. Heard Mr.Veerabathran Prashanth, learned counsel, for Mr.R.Sivaraman, learned counsel for the petitioner and Mr.A.P.Srinivas, learned Senior Standing Counsel, for the respondents. This writ petition is taken up for final disposal, by express consent of both the learned counsel, at the admission stage itself.

3. This writ petition challenges an order passed by the first respondent / The Principal Commissioner of Income Tax, on a stay application filed by the petitioner seeking stay of recovery proceedings in respect of a demand arising from order of assessment dated 31.12.2018 for the assessment year 2015-16.

4. The Stay Application has been filed on 15.02.2019 and the petitioner has raised therein the existence of a prima facie case, inability to pay any amount of the disputed tax and balance of convenience, as arguments in her favour. She has also sought a personal hearing.

5. It appears that prior to approaching the first respondent, the petitioner had sought a stay before the Assessing Officer who had, vide his order dated 22.03.2019, passed an order rejecting the earlier stay application directing the Assessee to pay 20% of the disputed demand.

6. The first respondent has, prior to passing of the impugned order, given opportunity of hearing as prayed for and has passed a detailed order. After consideration of the factors of prima facie case, financial stringent and balance of convenience, he has called upon the petitioner to remit 20% of the impugned demand in three equal monthly instalments. The balance of the demand has been stayed for a period of six months or till the disposal of the Appeal by CIT (A), whichever is earlier. The Officer has also laid down a condition that the Assessee shall cooperate with the CIT (A) in disposal of the Appeal and no adjournment shall be taken. He has also protected the right of the Department to adjust any refund arising in the case of the Assessee.

7. Mr.A.P.Srinivas defends the impugned order as being a well-reasoned order, requiring no interference by this Court.

8. I agree. As far as prima facie case is concerned, the Commissioner has recorded that the seized material found in the premises of M/s.Pothy's Private Limited has revealed a running account indicating the payment of cash to the Assessee. A sworn statement has also been recorded by an employee in the premises, who has admitted that the on-money was paid to the Assessee.

9. The petitioner has raised before the Assessing Officer the point that she was not provided an opportunity to cross-examine the witnesses, though she does not pursue this request before the Commissioner. Moreover, it is upon a holistic consideration of all relevant factors that the Officer has sought payment of 20% of the disputed demand. In all, the order is well-considered taking into account the balance of convenience of both parties. I see no reason to interfere with the same. This writ petition is, thus, dismissed.

10. At this juncture, learned counsel for the petitioner submits that the first Appeal is pending before the third respondent / Commissioner of Income Tax (Appeals) and seeks liberty to make a request for early and expeditious hearing of the Appeal. He is granted the same. Consequently, the connected WMP is closed with no order as to costs.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

srk
To
1. The Principal Commissioner of Income Tax - 1,
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Central Circle - 1 (3),
121 Mahatma Gandhi Road, Nungambakkam, Chennai 600 034

3. The Commissioner of Income Tax (Appeals) - 18,
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+1 CC to Mr.R.Sivaraman, Advocate sr 35950.
+1 CC to Mr.A.P.Srinivas, Advocate sr 34951.

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MR(CO)
SP(13/05/2019)