

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated :03.06.2019

Coram

THE HONOURABLE MR. JUSTICE M.SUNDAR

W.P.No.13984 of 2019

and

WMP.Nos.14025 & 14027 of 2019

Rakesh P Sheth

.. Petitioner

vs.

1. The Income Tax Commissioner,
Office of the Commissioner of Income - Tax (Appeals)
Room No.223, 2nd Floore, Aayakar Bhavan,
Main Building, 121, Mahatma Gandhi Road,
Chennai - 600 034.

2. The Assistant Commissioner of Income Tax,
Non-Corporate Circle - 15(1)
No.121, Mahatma Gandhi Road, Chennai - 34.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus to call for the records of the impugned order in F.No.6102/PCIT-6/2015-16 dated 22.09.2017 passed by the 1st respondent against the petitioner for Assessment year 2012-13 bearing PAN No. AASPS6238A and quash the same consequently directing the 1st respondent to dispose his stay application on merits and in accordance with the guidelines issued by this Hon'ble Court in W.P.No.3849 of 2019 dated 13.02.2019 within a time frame stipulated by this Court and pass such further or other orders as this Hon'ble Court may deem fit in the facts and circumstances of the case and thus render justice.

For Petitioners : Mr.Nithyaesh Natraj
For Respondents : Mr.A.N.R.Jayapratha
Junior Standing Counsel for Income Tax

ORDER

Mr.Nithyaesh Natraj, learned counsel of M/s.Nithiyaesh & Vaibhav [Law Firm] is before this Court on behalf of the sole writ petitioner.

2. Mr.A.N.R.Jayaprathap, learned Junior Standing Counsel for Income Tax accepts notice on behalf of both the respondents.

3. By consent of both the learned counsel, the main writ petition itself is taken up for disposal.

4. The main writ petition itself was heard out, though the matter is listed under the caption 'FOR ADMISSION'. As mentioned supra, this is by consent of both the counsel considering the narrow scope of which the entire writ petition turns.

5. This petitioner is an income tax assessee and the entire writ petition pertains to assessment year 2012-2013.

6. Considering the narrow scope of the writ petition and the stated position of the learned Standing counsel for respondents, it may not be necessary to advert to the facts in great detail.

7. Suffice to say that the petitioner has preferred an appeal before the first respondent and has also taken out a stay petition therein.

8. Stay petition came to be rejected by an order dated 22.09.2017 bearing reference No.6102/PCIT-6/2015-16, which is called in question in the instant writ petition and the same shall therefore be referred to as 'impugned order' for the sake of convenience and clarity.

9. Adverting to the impugned order, learned counsel for petitioner submitted that it is not only cryptic, but it has given a complete go by to the parameters and determinants which have to be taken into account while disposal of stay petition of this nature.

10. Learned counsel for the writ petitioner drew the attention of this Court to an order dated 13.02.2019 of this Court in W.P.No.3849 of 2019 and submitted that in the said order, this Court has laid down the parameters and determinants which have to be taken into account in disposal of such a stay petition. In other words, according to learned counsel for writ petitioner, there is

an adumbration of the mode and the manner in which the stay petitions of this nature have to be disposed of. Most relevant paragraphs are paragraphs 12 and 14, which read as follows:

'12. The Circulars and Instruction 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.

14. The disposal of the request for stay by the petitioner leaves much to be desired. I am of the categorical view that the Assessing Officer ought to have taken note of the conditions precedent for the grant of stay as well as the seeking stay filed by the petitioner is itself cryptic. However, as noted by the Supreme Court in the case of Commissioner of Income Tax vs Mahindra Mills, ((2008) 296 ITR 85 (Mad)) in the context of grant of depreciation, the Circular of the Central Board of Revenue (No.14 (SL-35) of 1995 dated April 11, 1955) requires the officers of the department 'to assist a taxpayer in every reasonable way, particularly in the matter of claiming and securing reliefs... Although, therefore, the responsibility for claiming refunds and reliefs rests with the assessee on whom it is imposed by law, officers should draw their attention to any refunds or reliefs to which they appear to be clearly entitled but which they have omitted to claim for some reason or

other.....'. Thus, notwithstanding that the assessee may not have specifically invoked the three parameters for the grant of stay, it is incumbent upon the assessing officer to examine the existence of a prima facie case as well as call upon the assessee to demonstrate financial stringency, if any and arrive at the balance of convenience in the matter.'

11. Mr.A.N.R.Jaya Prathap, learned Standing Counsel for Revenue very fairly submitted that the aforesaid order dated 13.02.2019 made in W.P.No.3849 of 2019 has been given legal quietus and there is no appeal against the same. As the Revenue has given legal quietus and finality to the aforesaid order, it follows as a indisputable sequitur that the Revenue has to necessarily follow the parameters laid down in the said order for disposal of stay petition.

12. Before this Court proceeds further, to be fair to the first respondent, it is to be recorded that this Court has noticed that the impugned order was passed on 22.09.2017, whereas the aforesaid order came to be passed by this Court only on 13.02.2019.

13. Be that as it may, as there is no dispute or disagreement that the aforesaid order is operating and the obtaining position with regard to disposal of stay petitions, it follows as a natural sequitur that the impugned order which is cryptic and which does not make any reference to the parameters and determinants adumbrated in the aforesaid order deserves to be set aside.

14. However, the matter is sent back to the Principal Commissioner of Income Tax, Chennai - 600 006 for disposal of the stay petition with regard to assessment year 2012-2013 afresh after affording an opportunity to the writ petitioner and by adhering to the aforesaid order of this Court dated 13.02.2019 made in W.P.No.3849 of 2019.

15. Learned counsel for writ petitioner submits that the main appeal is still pending and this statement is taken on record.

16. To be noted, the first respondent as arrayed in the writ petition reads as follows:

'The Income Tax Commissioner,
Office of the Commissioner of Income -
Tax (Appeals)
Room No.223, 2nd Floore, Aayakar Bhavan,

Main Building, 121, Mahatma Gandhi Road,
Chennai - 600 034.'

but, the learned counsel for Revenue points out that the appellate authority, who passed the impugned order is the Principal Commissioner of Income Tax, Chennai - 600 006 and the learned counsel for Revenue undertakes to inform the appellate authority concerned about this order under cover of a suitable letter.

17. The appellate authority shall dispose of the aforesaid stay petition within four weeks from today.

18. This writ petition is disposed of with the above observations. Consequently, connected miscellaneous petitions are closed. No costs.

Sd/-
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

vsm

To

1. The Income Tax Commissioner,
Office of the Commissioner of Income - Tax (Appeals)
Room No.223, 2nd Floore, Aayakar Bhavan,
Main Building, 121, Mahatma Gandhi Road,
Chennai - 600 034.

2. The Assistant Commissioner of Income Tax,
Non-Corporate Circle - 15(1)
No.121, Mahatma Gandhi Road, Chennai - 34.

3.The Principal Commissioner of Income Tax,
Chennai - 600 006.

+1cc to Mr.A.P.Srinivas , Advocate SR.No. 44622

W.P.No.13984 of 2019
and WMP.Nos.14025 & 14027 of 2019
A.SK(07/06/2019)