IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.07.2019

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THE HON'BLE MR. JUSTICE M. SUNDAR

W.P.No.19198 of 2019
and W.M.P.No.18633 of 2019

Sushiladevi Gadhiya ... Petitioner

vs.

1.The Principal Commissioner of Income Tax,
Central – 1, New No.46, M.G.Road,
Chennai - 600 034.

2.The Commissioner of Income Tax (Appeals) – 19,
Chennai - 600 034.

3.The Assistant Commissioner of Income Tax,
Central Circle – 3(4),
New No.46, M.G.Road,
Chennai - 600 034. ... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus, calling for the records relating to the order of the Principal Commissioner of Income Tax, Central -1/1st respondent in C.No.1571/PCIT-1/17-18 dated 19.06.2019 for the Assessment year 2016-17 in the case of the petitioner and quash the same and direct the 1st respondent to grant stay of collection of demand till the disposal of appeal by 2nd respondent.

For Petitioner : Mr.R.Venkata Narayanan
for M/s.Subbaraya Aiyar Padmanabhan

For Respondents: Mr.A.P.Srinivas
Senior Standing Counsel (Income Tax)

O R D E R

Mr.R.Venkata Narayanan of M/s.Subbaraya Aiyar Padmanabhan (Law Firm), on behalf of the writ petitioner and Mr.A.P.Srinivas, learned Standing Counsel on behalf of all the three official respondents are before this Court.

2.Before this Court proceeds further with this order, it is necessary to make it clear that this order is passed by consent. In other words, this is a consent order.

3.With the aforesaid prefatory note, this Court proceeds to advert to minimum facts which are imperative for appreciating this order.

4.Suffice to say that this matter arises under 'Income Tax Act, 1961' ('IT Act' for brevity). The relevant assessment year is 2016-2017. An order came to be passed by the Assessing Officer (3rd respondent before this Court) under Section 143(3) of IT Act. This order was carried in appeal by the writ petitioner (assessee) by way of regular statutory appeal to the 2nd respondent, namely, Commissioner of Income Tax (Appeals) under Section 246-A of IT Act.

5.Pending aforementioned appeal, relying on certain circulars which are operating in this field, it is submitted that the writ petitioner on her own volition, paid 20% of the tax demanded.

6.Under the aforesaid circumstances, pending statutory appeal of the writ petitioner (assessee) before the 2nd respondent Appellate Authority, i.e. statutory appeal under Section 246-A of IT Act, writ petitioner approached a superior officer being the Principal Commissioner of Income Tax, respondent No.1 before this Court, with a prayer for stay. Though, the nomenclature used is 'stay', a Hon'ble Single Judge of this Court, in a reported judgment in Cavinkare (P) Ltd. v. Commissioner of Income Tax (Appeals) reported in (2018) 93 taxmann.com 14 (Madras) held that it is a reference in popular parlance. Therefore, in the considered opinion of this Court, it is a reference in common parlance.

7.Be that as it may, the aforesaid request of the writ petitioner (assessee) for stay came to be negatived by the 1st respondent Principal Commissioner in and by order dated 19.06.2019 (hereinafter 'impugned order' for brevity). Instant writ petition has been filed assailing the impugned order.

8.Mr.A.P.Srinivas, learned Revenue counsel, submitted that, apart from aforesaid order made in Cavinkare case, another order dated 16.07.2018 made by a Hon'ble Single Judge of this Court in W.P.No.7410 of 2018 [Kalaignar TV Private Limited v. The Assistant Commissioner of Income Tax and another] is also now in vogue.

9.There is no disputation or disagreement before this Court in the hearing today that the common principle that can be deduced from the aforesaid Cavinkare as well as Kalaignar TV cases is to the effect that, when Principal Commissioner has negatived a request for what is referred to as 'stay' in common parlance, it will be still open to the Appellate Authority to consider the prayer for stay notwithstanding the position that the Principal Commissioner is higher than the Appellate Authority in the hierarchy of officers in the Income Tax Department. There is no disputation or disagreement with regard to this principle. In Cavinkare case, this Court kept the order of the Principal Commissioner in abeyance and permitted the assessee to approach the Appellate Authority for stay. In Kalaignar TV case, this Court set aside the order of the Principal Commissioner and permitted the assessee to approach the Appellate Authority with a prayer of interim stay. In the light of Cavinkare, the following consent order is passed :

(a) the impugned order, being order dated 19.06.2019 bearing reference No.C.1571/PCIT/C-1/17-18 made by the 1st respondent, is kept in abeyance. To be noted, this order is kept in abeyance without expressing any view or opinion on merits and it is kept in abeyance for the purpose of enabling the writ petitioner (assessee) to approach the 2nd respondent Appellate Authority with a prayer for stay, to be noted 'stay' in common parlance.

(b) Now that the impugned order is kept in abeyance, it is open to the writ petitioner to approach the 2nd respondent Appellate Authority, before whom writ petitioner's statutory appeal under Section 246-A of IT Act is pending, with a prayer for stay.

(c) if the writ petitioner (assessee) approaches the 2nd respondent Appellate Authority with prayer for stay, the 2nd respondent Appellate Authority shall consider such prayer, on its own merits by applying all parameters and determinants which are necessary to be considered for deciding the prayer for stay. It is made clear that such a prayer will be considered by the 2nd respondent uninfluenced and untrammeled by impugned order, which has been kept in abeyance for this very purpose.

(d) if the writ petitioner approaches the 2nd respondent with a prayer for stay, the same shall be disposed of by the 2nd respondent Appellate Authority as expeditiously as possible, in any event within four weeks from the date of filing of stay petition.

10.This writ petition is disposed of with the above directions. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS-)

//True Copy//

Sub Assistant Registrar

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To

1.The Principal Commissioner of Income Tax,
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Chennai - 600 034.

3.The Assistant Commissioner of Income Tax,
Central Circle – 3(4),
New No.46, M.G.Road,
Chennai - 600 034.

+1cc to Mr.A.P.Srinivas Advocate, S.R.No.57804
+1cc to M/s.Subbaraya Aiyar Padmanabhan Advocate, S.R.No.58389

BP(CO)
CB(25/09/2019)

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