BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **24.04.2019**

CORAM
THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE
W.P.(MD).No.9744 of 2019
and
W.M.P.(MD) No.7644 of 2019

M/s.T.M.Handlooms Private Limited,
Rep., by its Director,
Mr.M.Meenakshi Sundaram,
Sellur,
Madurai 625 002. ... Petitioner

-vs-

1) The Commissioner of Income Tax (Appeals),
O/o the Commissioner of Income Tax (Appeals),
Bibikulam, Madurai.

2) The Joint Commissioner of Income Tax,
O/o the Joint Commissioner of Income Tax,
Corporate Circle – 2,
C.R.Buildings, V.P.Rathinasamy Nadar Road,
Madurai -625 002

3) The Assistant Commissioner of Income Tax/Assessing Officer,
O/o the Assistant Commissioner of Income Tax,
Corporate Circle -2,
No-2, V.P.Rathinasamy Nadar Road,
Madurai -625 002 ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus calling for the records relating to the impugned order passed by the 1st respondent in his proceedings PAN:AABCT6418R dated 15.03.2019 and quash the same as illegal and consequentially direct the 1st respondent to take up the stay petition filed by the petitioner without reference to the pre-deposit amount and decide the same on merits and in accordance with law.

For Petitioner : Mr.M.Ajmal Khan,
Learned Senior Counsel

For Respondents : Mrs.S.Srimathy,
Special Government Pleader

ORDER

The instant writ petition has been filed challenging the dismissal of the stay application filed by the petitioner as against the assessment order dated 29.12.2018 passed by the third respondent for the Assessment year 2011-12 which resulted in the demand of Rs.1,91,31,620/- against the petitioner.

2. The learned senior counsel appearing for the petitioner submitted that the first respondent has rejected the stay application solely on the ground that the petitioner has not made the pre-deposit of 20% of the demanded amount as per the CBDT's modified guidelines for the Stay of Demand vide Instruction No.1914 dated 29.02.2016.

3. Heard Mr.M.Ajmal Khan, learned senior counsel appearing for the petitioner and Mrs.S.Srimathy, learned Additional Government Pleader appearing for the respondents.

4. The learned senior counsel drew the attention of this Court to the order passed by the Hon'ble Supreme Court reported in ***2018 SCC Online SC 1214*** in the case of ***Principal Commissioner of Income Tax vs., L.G.Electronics India Pvt., Ltd*** wherein the Hon'ble Supreme Court held that any administrative circular will not operate as a fetter on the Commissioner since it is a quasi judicial authority. The Hon'ble Supreme Court has clarified that for the grant of stay of the impugned assessment order, the conditions imposed will depend on the facts of individual cases and the appellate authority viz., the first respondent has got the powers to even pass a conditional order for a lesser amount than the 20% as stipulated in the CBDT's circular. The operative portion of the aforesaid order of the Hon'ble Supreme Court is extracted hereunder:-

> *"3. Having heard Shri Vikramjit Banerjee, learned ASG appearing on behalf of the appellant, and giving credence to the fact that he has argued before us that the administrative Circular will not operate as a fetter on the Commissioner since it is a quasi judicial authority, we only need to clarify that in all cases like the present, it will be open to the authorities, on the facts of individual cases, to grant deposit orders of a lesser amount than 20%, pending appeal."*

5. Learned counsel for the petitioner also drew the attention of this Court to a Single Bench judgment of this Court dated 06.03.2019 passed in W.P.(MD) No.5923 of 2019 in the case of ***Uthangarai Sri Vidya Mandir Educational and Social Welfare Trust vs the Assistant Commissioner of Income Tax, Circle - 1, Hosur and another*** wherein, in identical matters, the learned Single Judge has held that the Office Instruction directing the Assessing Authority to call upon the assessee to remit 20% of the disputed tax, is, at best, only a thumb rule and not a mandatory pre-condition, cast in stone. The learned Single Judge has also held that the condition for the grant of stay depends upon *prima facie* case, financial

stringency demonstrated and established by the Assessee and the balance of convenience in the matter.

6. Under the impugned order, without applying his mind independently, the first respondent has summarily rejected the stay application on the ground that the petitioner has not complied with the CBDT's modified guidelines, vide Instruction No.1914 dated 29.02.2016 by making a pre-deposit of 20% of the demand amount of Rs.1,91,31,620/-. In view of the aforesaid decision of the Hon'ble Supreme Court followed by the judgment of the learned Single Judge of this Court, referred to supra, the impugned order has been passed by total non-application of mind and is bad in law and it has to be quashed.

7. In the result, the impugned order dated 15.03.2019 passed by the first respondent in his proceedings PAN:AABCT6418R is hereby quashed. However, the first respondent is directed to dispose the Appeal filed by the petitioner as against the Assessment order dated 29.12.2018 for the Assessment year 2011-12 within a period of four months from the date of receipt of a copy of this order and till the disposal of the Appeal, this Court grants stay of recovery of the demand amount of Rs.1,91,31,620/- against the petitioner, as per the assessment order dated 29.12.2018 for the assessment year 2011-12. With the aforesaid directions, the **writ petition is disposed of.** No costs. Consequently, connected W.M.P.(MD)No.7644 of 2019 is closed.

Sd/-

Assistant Registrar (AD I)

// True Copy //

Sub Assistant Registrar(CS)

To

1) The Commissioner of Income
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O/o the Commissioner of Income Tax (Appeals),
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Corporate Circle -2,

No-2, V.P.Rathinasamy Nadar Road,
Madurai -625 002

+1cc to M/S.AJMAL ASSOCIATES,Advocate, SR.No. 62578
+1cc to M/S.S.SRIMATHY, Advocate, SR.No. 62254

Order made in
W.P.(MD).No.9744 of 2019
24.04.2019

STS
KK/SAR/07.05.2019/ 4P- 6C