IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 28.02.2020

CORAM

THE HONOURABLE DR. JUSTICE ANITA SUMANTH

W.P. No.5114 of 2020
and
WMP. Nos.6035 & 6036 of 2020

R.Vimala

...Petitioner

Vs

1.The Deputy Commissioner of Income Tax
Central Circle 1 (1), Salem - 636 007.

2.The Commissioner of Income Tax (Appeals),
Gandhi Road, Salem - 636 007. ...Respondents

Prayer : PETITION filed under Article 226 of The Constitution of India praying for the issuance of Writ of Certiorarified Mandamus to call for the records of the 1st respondent in PAN No.ACOPV5881A and quash the impugned Letter No.ITBA/COM/F/17/2019-20/1025030894(1) dated 12.02.2020 passed by 1st Respondent for AY 2017-18 and consequential forbearing 1st respondent from recovery of the tax pending disposal of the appeal and stay petition filed before the 2nd Respondent in ITA No.10362/2019-20/CIT (A).

For Petitioner : Mrs. G.Vardini Karthik

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

O R D E R

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

2. By consent expressed by both learned counsel and since the matter involves a short point, this Writ Petition is disposed finally even at the stage of admission.

3. The petitioner has suffered an order of assessment dated 10.12.2019 for Assessment Year 2017-18 passed in terms of the provisions of the Income Tax Act, 1961 (in short 'Act'). A statutory appeal has been filed, pending before the Commissioner of Income Tax (Appeals)/R2. On 01.02.2020, the petitioner has also filed a stay application before R2 which is also stated to be pending as on date. Even during the pendency of the aforesaid stay application, the impugned communication has been issued by the Assessing Officer/R1 treating the petitioner as assessee in default and calling upon the petitioner to remit the disputed taxes forthwith under threat of coercive action.

4. I am of the view that such recovery proceeding are pre-mature, since the petitioner has admittedly filed an application seeking stay before the Appellate Commissioner and the Central Board of Direct Taxes (CBDT) has, in Instruction No. 1914 F. No. 404/72/93 ITCC dated 02.12.1993 directed the Appellate Commissioner to dispose the applications for stay filed by an assessee within a period of two weeks from date of filing of the same.

5. In view of the aforesaid, the impugned communication dated 12.02.2020 is set aside. The petitioner is permitted to appear before the Commissioner of Income Tax (Appeals)/R2 on Tuesday, the 09th March of 2020 at 10.30 a.m. without expecting any further notice in this regard. After hearing the petitioner and considering the stay application, an order shall be passed by R2, taking into consideration the three fold aspects of prima facie case, financial stringency and balance of convenience. This exercise shall be completed within a period of four (4) weeks from 09.03.2020, i.e., on or before 07.04.2020. Let no coercive measures for recovery be insisted upon till 07.04.2020. In the event the petitioner does not appear on the aforesaid date of hearing, the impugned order will stand revived.

6. This Writ Petition is disposed in the aforesaid terms. No costs. Connected Miscellaneous Petitions are also closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

To

1.The Deputy Commissioner of Income Tax
Central Circle 1 (1), Salem - 636 007.

2.The Commissioner of Income Tax (Appeals),
Gandhi Road, Salem - 636 007.

+1cc to M/s.Arun Kurian Joseph, Advocate Sr.17604
+1cc to M/s.A.P.Srinvas, Advocate Sr.18072

W.P. No.5114 of 2020
and
WMP. Nos.6035 & 6036 of 2020

vsn II[co]
srg 04/03/2020