IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.06.2020

CORAM

THE HON'BLE MR.JUSTICE R.SUBRAMANIAN

W.P.No.8209 of 2020 and
WMP Nos.9785, 9787 and 9792 of 2020

Narayanamoorthy Gnana Mugundan,
Rep. By Accountant A.Mohanraj .. Petitioner

Vs.

1. The Income Tax Officer,
   Non-Corp WD22(1) TBM,
   1st and 2nd Floor, Ramakrishna Salai,
   West Tambaram, Chennai - 600 045.

2. The Commissioner of Income Tax,(Appeals)-10,
   Mahatma Gandhi Road, Chennai 600 034.

3. The Branch Manager,
   Vijaya Bank,
   No.2, Tannery Road,
   Somasundaram Nagar,
   Pallavaram, Chennai- 600 043. .. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for Writ of Certiorarified Mandamus, calling for the records of the first respondent in PAN No.BMNPG2851F - DIN & Letter No.ITBA/COM/F/17/2019-20/1026414321 (1) for the assessment year 2017 - 18, quash the proceedings dated 11.03.2020 issued therein and further grant an absolute stay of his Assessment Order in Order No. ITBA/AST/S/143(3)/ 2019-20/1021932553(1) dated 09.12.2019 for the Assessment Year 2017-18 pending disposal of the appeal on the file of the Second Respondent herein.

For Petitioner : Mr.R.L.Ramani, Senior Counsel
for Mr. B. Raveendran

For Respondents: Mr.Prabhu Mukundh Arunkumar
for RR 1 & 2

ORDER

This matter is taken up for hearing through Video-Conferencing.

2. The petitioner is aggrieved by an order passed under Section 220 (6) of the Income Tax Act requiring him to pay 20% of the tax due, to treat him as an assessee not in default, made by the Assessing Officer in view of the fact that the Appeal filed by the petitioner under Section 246 is pending before the Commissioner Appeals viz., the second respondent.

3. Mr.R.L.Ramani, learned Senior Counsel appearing for the petitioner would contend that the Assessing Officer had merely referred to the circular of the CBDT for directing the petitioner to pay 20% of the tax due, without going into the other aspects. He would also rely upon the judgment of this Court in WP No.3849 of 2019, wherein, Hon'ble Dr. Justice Anita Sumanth, had after considering the scope of Section 220 (6), held that Assessing Officers need not mechanically follow the circulars of the CBDT, since they are only in the nature of a guideline. This Court has also pointed out that the Assessing Officer has to consider other facts also while determining the percentage of the amount of disputed Tax that is to be deposited by the assessee to claim the benefits of Subsection 6 of Section 220.

4. Mr.Prabhu Mukundh Arunkumar, learned Counsel appearing for the respondents 1 and 2 would contend that the Officer is justified in following the directions of the CBDT. This very question has been considered by this Court in WP No.3849 of 2019.

5. In view of the said judgment, I am of the considered opinion that the present impugned order has to go, hence the impugned order is set aside. The matter is remitted back to the Assessing Officer to enable him to pass orders afresh in the light of the directions issued by this Court in WP No.3849 of 2019.

6. The Writ Petition is disposed of with the above observation. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

jv

To

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SV(CO)
GS(07/07/2020)