BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 22.01.2020

CORAM

THE HONOURABLE MR.JUSTICE **S.S.SUNDAR**

W.P.(MD)No.1099 of 2020
and
W.M.P.(MD)Nos.889 and 890 of 2020

Suresh Anuradha ... Petitioner

vs.

1.The Commissioner of Income Tax (Appeals-2),
Income Tax Buildings,
V.P.Rathinasamy Road, Bibikulam, Madurai.

2.The Income Tax Officer,
(Non Corporate Ward-1(1)),
Income Tax Buildings,
V.P.Rathinasamy Road, Bibikulam, Madurai. ... Respondents

Prayer: 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 under DIN & Letter No.ITBA/COM/F/17/2019-20/1023768103(1) on the file of the second respondent, dated 10.01.2020, mandating the petitioner to pay 20% of the disputed demand of Income Tax in respect of assessment year 2017-18 in respect to the PAN Number AHFPA4358R and to quash the same as illegal, void and incompetent and to direct the first respondent to dispose of the appeal filed by the petitioner on 09.01.2020 under Section 246A of Income Tax Act 1961 challenging the order passed by the second respondent under Section 143(3) of the Act by forbearing the respondents from insisting the petitioner to remit 20% of the disputed demand of Income Tax in respect of assessment year 2017-18.

For Petitioner :Mr.G.Thalaimutharasu
for Mr.B.Saravanan

For Respondents : Mrs.S.Srimathy

O R D E R

This Writ Petition is filed for issuing a Writ of Certiorarified Mandamus to quash the impugned order passed by the second respondent vide DIN & Letter No.ITBA /COM /F /17 /2019-20 /

1023768103(1), dated 10.01.2020, mandating the petitioner to pay 20% of the disputed demand of Income Tax in respect of assessment year 2017-18 in respect to the PAN Number AHFPA4358R and to direct the first respondent to dispose of the appeal filed by the petitioner on 09.01.2020 under Section 246A of Income Tax Act 1961 challenging the order passed by the second respondent under Section 246A of Income Tax Act 1961 challenging the order passed by the second respondent under Section 143(3) of the Act by forbearing the respondents from insisting the petitioner to remit 20% of the disputed demand of Income Tax in respect of assessment year 2017-18.

2.By consent of both parties, the Writ Petition is taken up for final disposal at the stage of admission itself.

3.By the impugned proceedings, the second respondent has demanded the petitioner to pay a sum equivalent to 20% of levied tax on or before 17.01.2020 for entertaining the appeal and stay petition under Section 220(6) of Income Tax Act 1961. Earlier, an assessment order was passed on 11.12.2009 directing the petitioner to pay a sum of Rs.21,58,888/-. Challenging the same, the petitioner has preferred an appeal along with the petition for stay under Section 226(6) of the Income Tax Act 1961. For the purpose of entertaining the stay petition, the respondents required the petitioner to pay 20% of the disputed demanded amount on or before 17.01.2020. The demand was on the basis of an Office Memorandum, dated 31.01.2017.

4.The learned Counsel for the petitioner submitted that there is no statutory obligation for the petitioner to remit 20% of the tax demanded for filing an appeal. Since such condition has been put unmindful of the civil consequences, the learned Counsel would submit that the requirement of 20% of levied tax amount without assigning any reason is illegal. However, without going into the merits of the case, the learned Counsel for the petitioner states that the petitioner may be permitted to deposit 10% of the demand instead of 20%, as directed in the impugned order. The learned Standing Counsel appearing for the respondents has no serious objection for this course.

5.Hence, this Writ Petition is partly allowed and the impugned order, dated 10.01.2020 directing the petitioner to pay 20% of the disputed demanded amount to respondents in respect of the assessment year 2017-18 is set aside. The petitioner is directed to remit a sum of Rs.2,00,000/- within a period of 15 days from the date of receipt of a copy of this order. On such deposit being made by the petitioner within the time stipulated, the order challenged before the appellate authority stands stayed till the disposal of the appeal. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (Records)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

cmr

+1 CC to M/s.B.SARAVANAN, Advocate (SR-2286[F] dated 22/01/2020)

+1 CC to M/s.S.SRIMATHY, Advocate (SR-2465[F] dated 22/01/2020)

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22.01.2020

JMN(06.02.2020) 3P : 3C