IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.11.2021

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.No.23221 of 2021
and
W.M.P.Nos.24520 and 24523 of 2021

(Through Video Conferencing)

M/s Dharma Jewellers,
Represented by its partner B.Muralinarasimhan,
No.75, Savithiri Nagar, Chetty Street,
Coimbatore - 641 001. ... Petitioner

Vs

1.The Assistant Commissioner of Income Tax,
Non Corp Circle 1, CBE,
Coimbatore-Main Building,
63, Race Course Road,
Coimbatore - 641 018.

2.The Deputy Commissioner of Income Tax,
Non Corp Circle 4, CBE,
Coimbatore-Main Building,
63, Race Course Road,
Coimbatore - 641 018.

3.The Commissioner of Income Tax-2 (Appeals),
Coimbatore.
(R3 suo motu impleaded in W.P.No.23221 of 2021
by MSJ) ... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus calling for the records of the impugned order dated 11.10.2021 vide DIN & Letter No.ITBA/COM/F/17/2021-2022/1036304326(1) passed by the second respondent and quash the same and direct the respondents to stay the recovery of tax demand until the disposal of the appeal by the Commissioner of Income Tax (Appeals).

For Petitioner : Mr.R.Balaramesh
For Respondents : Mr.A.P.Srinivas
Senior Standing Counsel

ORDER

The petitioner has challenged the impugned order dated 11.10.2021 passed by the second respondent, the Deputy Commissioner of Income Tax under Section 220(6) of the Income Tax Act, 1961 (hereinafter referred to as the IT Act).

2. The learned counsel for the petitioner submits that an Assessment Order came to be passed by the first respondent on 18.12.2019 for the Assessment Year 2017-2018. Under these circumstances, the petitioner had also preferred an appeal before the Commissioner of Income Tax (Appeals) under Section 246(A) of the IT Act, 1961.

3. The learned counsel for the petitioner further submits that the appeal was also taken up for hearing before the Commissioner of Income Tax (appeals) and a written submission was filed by the petitioner on 11.01.2021. Thereafter, the impugned order has been passed by the second respondent purportedly in terms of Section 220(6) of the IT Act, 1961.

4. The learned counsel for the petitioner submits that under similar circumstances, this Court by its order dated 18.11.2015 in N.Jegatheesan Vs Deputy Commissioner of Income-tax, Non-Corporate Circle-2, Madurai, CDJ 2016 MHC 2220 passed in W.P.(MD).No.10171 of 2015 has granted relief to a person in terms of the decision of the Rajasthan High Court in Maheshwari Agro Industries Vs Union of India [2012] 346 ITR 375/206 Taxman 375/17 taxmann.com 68(Raj).

5. The learned counsel for the petitioner has also placed reliance on the decision of the Hon'ble Supreme Court in Principal Commissioner of Income Tax-5 and others Vs M/s. LG Electronics India Private Limited in Civil Appeal No.6850 of 2018 vide its order dated 20.07.2018, wherein the Hon'ble Supreme Court observed that administrative circulars will not operate as a fetter on the Commissioner since it is a Quasi Judicial Authority and that the Hon'ble Supreme Court clarified that in all cases, it will be open for the authorities on the facts of individual case to grant deposit orders of lesser amount than twenty percent.

6. Appearing on behalf of the respondents, the learned Senior Standing Counsel submits that Central Board of Direct Taxes clarification/circular dated 29.02.2016 vide O.M.No.404/72/93-ITCC was modified Vide office memorandum in F.No.404/72/93-ITCC dated 31.07.2017 and a modified guidelines was issued to streamline the process of stay petition to standardize the quantum of lump sum payment required to be made by an assessee as pre-condition for stay of demand of disputed tax before Commissioner of Income Tax (Appeals). Therefore, there is no merits in the present writ petition.

7. By way of rejoinder, the learned counsel for the petitioner submits that already the petitioner has pre-deposited a sum of Rs.11,90,000/- and that there is an excess of Rs.9,00,000/- and TDS amount has not been adjusted during the previous Assessment Years. He therefore submits that impugned order may be quashed by directing the Commissioner of Income Tax (Appeals) to pass final order.

8. Heard the learned counsel for the petitioner and the learned Senior Standing Counsel for the respondents.

9. The guide lines issued by the Central Board of Direct Taxes are binding on authorities acting under the Act. However, the position of law stands now clarified by the Hon'ble Supreme Court in LG Electronics India Private Limited case referred to supra.

10. This aspect ought to have been considered by the second respondent instead of asking the petitioner to straight away pay twenty percent of the disputed demand in terms of clarification/circular dated 29.02.2016 vide O.M.No.404/72/93-ITCC of the Central Board of Direct Taxes.

11. Considering the same, the impugned order is quashed and the case is remitted back to the second respondent to pass a fresh order keeping in mind the observation of the Hon'ble Supreme Court in LG Electronics India Private Limited case referred to supra. This exercise shall be carried out by the second respondent within a period of thirty days from the date of receipt of a copy of this order.

12. This Writ Petition stands allowed with the above observations. No costs. Consequently, connected Writ Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

rgm/arb

To

1.The Assistant Commissioner of Income Tax,
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2.The Deputy Commissioner of Income Tax,
Non Corp Circle 4, CBE,Coimbatore-Main Building,
63, Race Course Road,Coimbatore - 641 018.

3.The Commissioner of Income Tax-2 (Appeals),Coimbatore.

+1 cc to Mr.A.P.Srinivas, Advocate Sr.NO. 58216

+2 ccs to Mr.R.Balaramesh, Advocate Sr.NO. 58233

W.P.No.23221 of 2021
and W.M.P.Nos.24520 and 24523 of 2021

SSV(CO)
A.SK(07.12.2021)