IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.11.2021

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.No.25164 of 2021
&
W.M.P.Nos.26529 & 26530 of 2021

(Through Video Conferencing)

M/s.Intimate Fashions (India) Pvt.Ltd,
Represented by its GM Finance
Mr.David Ponraj,
518, Nandhivaram Village,
Thirupporuru Kottamedu High Road,
Nandhivaram Guduvancheri,
Chennai - 603 202. ... Petitioner

Vs

1.The Deputy Commissioner of Income Tax,
Corporate Circle - 1(1),
121, Mahatma Gandhi Road,
Nungambakkam, Chennai - 600 034.

2.The Income Tax Officer,
National Faceless Assessment Centre,
New Delhi.

3.The Commissioner of Income Tax (Appeals),
National Faceless Appeal Centre,
New Delhi. ... Respondents

Prayer:

Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, to call for the records of the 1st respondent and to quash the order bearing F.No.AAAC12706C/stay DCIT/C.C-1(1) 2021-2022/dated 29.10.2021 issued by the 1st respondent and consequently direct the 1st respondent to grant a stay of the demand, made pursuant to Assessment Order bearing No.ITBA/AST/S/143(3)/2021-22/1035994825 (1) issued by the 2nd respondent, pending Appeal filed by the petitioner vide Acknowledgement No.742605110271021 on the file of the 3rd respondent.

For Petitioner : Mr.Srinath Sridevan

For Respondent : Mrs.Hema Muralikrishnan
Senior Standing Counsel

ORDER

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

2.This writ petition is being disposed at the time of admission considering the fact that the order has been relied on the Instruction No.1914 dated 02.12.1993 as modified on 31.07.2017 vide F.No.404/72/93-ITCC (FTS:284146). It is noticed that the decision of the Hon'ble Supreme Court in the decision of the Principal Commissioner of Income Tax & 5 Ors Vs. LG Electricals India Private Ltd (2018) 18 SCC 477 has held as under:

> ''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.''

3.Considering the same, since the order has not discussed the case of the petitioner on merits, as to whether the petitioner is entitled for waiver of amount below 20% of the disputed tax in the impugned order, the impugned order is quashed and the case is remitted back to the 1st respondent to pass a speaking order in the light of the above decision of the Hon'ble Supreme Court. This exercise shall be carried out by the 1st respondent within a period of 30 days from the date of receipt of a copy of this order. If desired, the petitioner may file appropriate application for being heard through Video Conferencing, in which case, the 1st respondent shall consider the representation/the request of the petitioner, in accordance with the prevailing rules governing for such personal hearing and grant such an opportunity of being heard through Video Conferencing.

4.This writ petition stands disposed of with the above observations. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

jas

To

1. The Deputy Commissioner of Income Tax,
   Corporate Circle - 1(1),
   121, Mahatma Gandhi Road,
   Nungambakkam, Chennai - 600 034.

2. The Income Tax Officer,
   National Faceless Assessment Centre,
   New Delhi.

3. The Commissioner of Income Tax (Appeals),
   National Faceless Appeal Centre,
   New Delhi.

+1cc to Mr.Srinath Sridevan , Advocate, S.R.No.60978
+1cc to Mrs.Hema Muralikrishnan , Advocate, S.R.No.61591

W.P.No.25164 of 2021
W.M.P.Nos.26529 & 26530 of 2021

PL(CO)
CT 09/12/2021