IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.02.2022

CORAM :

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

W.P.No.3102 of 2022 and
W.M.P.Nos.3271 & 3274 of 2022

S.Gunvanth Raj … Petitioner

Vs.

1.The Additional/Joint/Deputy/Assistant Commissioner
of Income Tax/Income-tax Officer,
National e-Assessment Centre, Delhi.

2.The Principal Chief Commissioner of Income Tax,
National E-Assessment Centre,
Income Tax Department, Delhi.

3.Assistant Commissioner of Income-tax,
Non Corporate Circle 4(1), Aaykar Bhawan,
Nungambakkam, Chennai. … Respondents

Prayer : Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari to call for the records of penalty proceedings initiated under Section 221(1) of the Income Tax Act, 1961 in PAN No.AAFPK9519F in DIN & Notice No.ITBA/RCV/S/ 221/2021-22/1037345342(1) dated 29.11.2021 in respect of assessment year 2013/14 by the 3rd respondent and quash the same as it is initiated without jurisdiction and against the provisions of Income Tax Act.

For Petitioner : Mr.R.Swarnavel

For Respondents : Mr.D.Prabhu Mukunth Arunkumar
Junior Standing Counsel

O R D E R

The prayer sought for herein is for a Writ of Certiorari to call for the records of penalty proceedings initiated under Section 221(1) of the Income Tax Act, 1961 in PAN No.AAFPK9519F in DIN & Notice No.ITBA/RCV/S/221/2021-22/1037345342(1) dated 29.11.2021 in respect of assessment year 2013/14 by the 3rd respondent and quash the same as it is initiated without jurisdiction and against the provisions of Income Tax Act.

2. For the assessment year 2013-2014, there was an assessment order under Section 147 of the Income Tax Act, 1961 dated 31.12.2015. As against the said assessment order, the petitioner already preferred appeal before CIT (Appeal) and the same is pending, where, even though the petitioner had sought for a stay of the demand, the said stay petition is yet to be decided.

3. In the meanwhile, the petitioner also filed application under Section 220(6) of the Act to seek for a stay before the Assessing Authority.

4. The Assessing Authority, having considered the said application, has rejected the same through order dated 08.12.2021. It is contended by the learned counsel appearing for the petitioner that, after getting the rejection order of stay petition filed under Section 220(6) of the Act, the petitioner also filed further application before the Principal Commissioner seeking for a stay and the same is still pending.

5. In that circumstances, now by communication dated 29.11.2021, the respondent issued a notice under Section 221(1) of the Act by initiating the penalty proceedings that is under challenge in this writ petition.

6. Mr.R.Swarnavel, learned counsel appearing for the petitioner would contend that, when an appeal filed against the Section 147 assessment proceedings before the CIT (Appeal) is pending, without deciding the stay petition, normally, the Assessing Authority would not initiate penalty proceedings under Section 221(1) of the Act.

7. He would also submit that, further when the petitioner made an application under Section 220(6) of the Act to stay the demand before the Assessing Authority, who, without considering the same in proper perspective, by evaluating the case of the petitioner and by giving reasons, has rejected the said application in a proceedings dated 08.12.2021, that too, styled as a proceedings issued under Section 220(6) as if that the said order is a garnishee proceedings issued on the part of the Assessing Authority in deciding the application under Section 220(6) of the Act and therefore, for all these reasons, now the

present proceedings initiated by way of notice under Section 220(1) of the Act for penalty proceedings is against the principles of natural justice and also without jurisdiction, therefore, the said proceedings is liable to be interfered with and set aside, he contended.

8. In support of his contention, the learned counsel appearing for the petitioner also relied upon a decision of the Hon'ble Supreme Court reported in (2001) 251 ITR 158 in the matter of Kec International Limited Vs. B.R.Balakrishnan and others.

9. Per contra, Mr.D.Prabhu Mukunth Arunkumar, learned Standing Counsel appearing for the respondents would submit that, mere filing of an appeal before CIT (Appeal) against the Section 147 proceedings will not preclude the Assessing Authority to proceed against the assessee for making a demand and also to initiate penalty proceedings. He would further submit that, his application filed under Section 220(6) of the Act for stay since has been considered and rejected through the order dated 08.12.2021 and the same since has not been challenged herein and further application has been filed by the petitioner assessee to the Principal Commissioner, let him pursue the said application and moreover, in the rejection order dated 08.12.2021 of his application under Section 220(6) of the Act, the Assessing Authority directed the assessee to pay only 20% of the demand for the grant of stay and it has further been stated by the Assessing Authority even for the payment of 20% of the demand, if the petitioner wants installment benefit, that also be considered if he makes an application to that effect. Therefore, when such a consideration has already been shown in the application submitted by the petitioner assessee under Section 220(6) of the Act and the petitioner assessee since has not responded to the said order and the option given to him to pay even on installment basis of 20% of the demand for the grant of stay, the present move taken by the petitioner to challenge the notice issued under Section 221(1) of the Act for initiating penalty proceedings is without any plausible reason or ground, therefore, impugned notice cannot be questioned for the alleged reason stated by the petitioner, hence, the learned Standing Counsel seeks dismissal of this writ petition.

10. I have considered the said rival submissions made by the learned counsel appearing for the parties and have perused the materials placed before this Court.

11. As has been rightly pointed out by the learned Standing Counsel appearing for the respondents, mere filing of an appeal before the Appellate Authority against the order passed under Section 147 of the Act would not preclude the Assessing Authority to make a demand and also to initiate penalty proceedings. In this case, during the pendency of the appeal, the petitioner also has filed an application for stay under Section 220(6) of the Act and the said application having been considered was, in fact, rejected for grant of blanket stay only. However, the Assessing Officer has stated that, as a condition precedent if the petitioner comes forward to pay 20% of the demand, stay would be granted. The Assessing Officer would further be stated that, if at all the petitioner in order to get further ease in making payment of 20% of the demand by way of installment, that also would be considered, provided, if the assessee comes forward to make application to that effect.

12. On seeing the said order dated 08.12.2021 passed under Section 220(6) of the Act, wherein the provision wrongly quoted as "226" of the Act, it is a reasoned order, where, the Assessing Officer, considering the facts and circumstances of the case, has used his discretion, of course, with condition which is a mandatory one that to be imposed by the Assessing Officer while exercising his discretion under Section 220(6) of the Act.

13. On the factual matrix of the case as well as the reasonable disposal of the stay application by the Assessing Officer, this Court feels that, the judgment cited by the learned counsel appearing for the petitioner may not apply to the facts of the present case.

14. Moreover, the petitioner seems to have filed further application before the Principal Commissioner to seek for a stay and according to the learned counsel for the petitioner, it is still pending, therefore, he can very well pursue the said application.

15. Moreover, insofar as initiating proceedings for penalty under Section 221(1) of the Act, it has made clear that, if there is any due of tax who is in default or deemed to be in default in arrears, the Assessing Officer may direct in case of a continuing default, such further amount or amounts as the Assessing Officer may, from time to time, direct by way of

penalty, but only condition is that, the penalty does not exceed the amount of tax in arrears. The proviso to Section 221 (1) says that, before levying any such penalty, the assessee shall be given a reasonable opportunity of being heard.

16. Only in order to comply with the said proviso under Section 221(1) of the Act, now the present notice, which is impugned herein, has been issued by the respondents. Therefore, the said notice in the legal scrutiny cannot be construed as a notice issued without jurisdiction or in violation of the principles of natural justice, hence, this Court has no hesitation to hold that, the impugned notice does not require any interference from this Court at this stage.

17. In that view of the matter, this Court is inclined to dispose of this writ petition with the following orders:

> That the impugned notice is sustained and therefore, the challenge against which fails, hence, this writ petition is liable to be dismissed, accordingly, it is dismissed. The dismissal of this writ petition shall not preclude the petitioner from pursuing further the application, he claimed to have already filed before the Principal Commissioner to seek for a stay of the demand during the pendency of the main appeal pending before the CIT (Appeal) against the order passed by the respondents under Section 147 of the Act.

18.With the above observation, this Writ Petition is dismissed. No costs. Consequently, connected miscellaneous petitions are also dismissed.

SD/-
ASSISTANT REGISTRAR

// TRUE COPY //

SUB ASSISTANT REGISTRAR

Sgl

To

1.The Additional/Joint/Deputy/Assistant Commissioner
of Income Tax/Income-tax Officer,
National e-Assessment Centre, Delhi.

2.The Principal Chief Commissioner of Income Tax,
National E-Assessment Centre,
Income Tax Department, Delhi.

3.Assistant Commissioner of Income-tax,
Non Corporate Circle 4(1), Aaykar Bhawan,
Nungambakkam, Chennai.

+1cc to Mr.R.Swarnavel, Advocate Sr.11373
+1cc to M/s.Hema Muralikrishnan, Advocate Sr.11358

W.P.No.3102 of 2022

ss[co]
srg 24/03/2022