IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.02.2022

CORAM

THE HONOURABLE MR.JUSTICE R. SURESH KUMAR

W.P. No.2747 of 2022 and
W.M.P.Nos.2909 & 2910 of 2022

Trac Media Private Limited,
Represented by its Authorised Signatory
Ms.Kavery Jagannathan
having its office at No.35,
Northern Phase 3rd Main Road,
Kalaimagal Nagar, Ekkatuthangal
Chennai - 600 032. ... Petitioner

Vs

1.The Assistant Commissioner of Income Tax,
Ministry of Finance
Income Tax Department,
National e-Assessment Centre, Delhi.

2.The Commissioner of Income Tax,
Non-Corporate Circle 10(1) Chennai,
121, Mahatma Gandhi Road,
Nungambakkam, Chennai - 600 034. ... Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India, praying for issuance of Writ of Certiorarified Mandamus calling for records relating to the demand of the first respondent in File No.:ITBA/ AST/S/156/2021-22/1032527787(1) dated 19.04.2021 and quash the same and forbear the first respondent from initiating recovery proceedings pending disposal of the Writ Petition.

For Petitioner : Dr.M.Sathyakumar

For Respondents : Mrs.Hema Muralikrishnan
Senior Standing Counsel

O R D E R

The prayer sought for herein is for a writ of certiorarified mandamus calling for records relating to the demand of the first respondent in File No.:ITBA/AST/S/156/2021-22/1032527787(1) dated 19.04.2021 and quash the same and forbear the first respondent from initiating recovery proceedings.

2. In respect of assessment year 2018-2019, in order to recover the tax assessed and imposed against the petitioner to the extent of Rs.15,30,23,040/-, the concerned authority of National e-Assessment Centre has issued a demand notice under Section 156 of the Income Tax Act, 1961 (in short 'the Act'). Challenging the said order, the petitioner moved this writ petition on the ground that, as against the assessment order dated 19.04.2021 appeal has been filed to National Faceless Appeal Centre. However, there has been no acknowledgment or communication whatsoever received by the petitioner in respect of the filing of the appeal or pendency of the appeal or further progression of the appeal. Therefore, based on which, the petitioner could not move any application before the Assessing Authority to stay the demand under Section 220(6) of the Act.

3. Mr.Sathyakumar, learned counsel appearing for the petitioner would submit that, since it is high pitch demand of more than Rs.15 Crores, because of the demand now made through the impugned order, the petitioner is greatly prejudiced as the petitioner has got a presentable case in the appeal which has already been filed before the Appellate Authority.

4. Even if the petitioner is driven to go before the Assessing Authority to file an application under Section 220(6) against the assessment order, that will be an On-line process, where, there can be no chance of the petitioner to put forth his case as it is a high pitch demand. Therefore, lessor percentage of demand can be directed to be paid by the petitioner by way of condition to be imposed in this regard under the said sub-section (6) of Section 220, in case, the Assessing Authority passes an order of stay. Therefore, since that chance is not available before the petitioner, he has no other option except to challenge the present demand made through the impugned notice dated 19.04.2021 issued under Section 156 of the Act, hence, the learned counsel seeks indulgence of this Court in this regard.

5. Heard Mrs.Hema Muralikrishnan, learned Senior Standing Counsel appearing for the respondents who would submit that, the petitioner claimed to have filed an appeal before the National Faceless Appeal Centre (NFAC) and mere filing of an appeal will not entail the petitioner to seek for any indulgence before this

Court against the demand made under Section 156 of the Act.

6. In this regard, the petitioner is free to make an application under Section 220(6) of the Act before the Assessing Authority, where, considering the plea to be made by the petitioner, the Assessing Authority by using his discretion may consider the said application, of course, by imposing certain conditions. When that being the procedure to be adopted, without which, the petitioner cannot straight away approach this Court by filing the present writ petition against the demand made under Section 156, therefore, on that ground itself, this writ petition is liable to be rejected, she contended.

7. Having considered the rival submissions made by the learned counsel appearing for both sides and taking into account the fact that, the petitioner is entitled to make an application under Section 220(6) of the Act, before the Assessing Authority to seek for a stay, of course, on condition, where, the petitioner can also put forth his case that, since it is a high pitch demand, the usual condition to be imposed in this regard for making a part of the demand, can be relaxed to the extent possible, this Court feels that, the present attempt made by the petitioner by filing this writ petition against the demand made under Section 156 of the Act cannot be entertained.

8. The reason being, mere filing of an appeal against the assessment order will not preclude the Assessing Authority to make a demand under Section 156 and therefore, the mere filing of an appeal and the information to that effect claimed to have been furnished to the Assessing Authority will not preclude the Assessing Authority to make a demand and therefore, on that ground also, this Court is not inclined to entertain this writ petition.

9. However, it is open to the petitioner to make an application under Section 220(6) of the Act within a period of two weeks from the date of receipt of a copy of this order, where, it is open to the petitioner to put forth his case that, since it is a high pitch claim of demand, the usual condition to be imposed by the Assessing Authority as a condition for grant of stay can be modified for a lesser percentage of demand and once such application is filed with an input and the plea to be made in this regard as indicated above by the petitioner, the same shall be objectively considered and decided on merits by the Assessing Authority within a period of four weeks thereafter.

10. With these observations, this Writ Petition is disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS-VI)

//True copy//

Sub Assistant Registrar

Sgl

To

1.The Assistant Commissioner of Income Tax,
Ministry of Finance
Income Tax Department,
National e-Assessment Centre, Delhi.

2.The Commissioner of Income Tax,
Non-Corporate Circle 10(1) Chennai,
121, Mahatma Gandhi Road,
Nungambakkam, Chennai – 600 034.

+1cc to Mrs.Hema Muralikrishnan, Advocate SR.No.10637

W.P.No.2747 of 2022

NRL(CO)
GMY(18/03/2022)