IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.02.2022

CORAM :

THE HONOURABLE MR. JUSTICE R.SURESH KUMAR

W.P.Nos.4159 & 4165 of 2022
and
W.M.P.Nos.4297, 4300, 4303 & 4306 of 2022

Sundareswaran Visalakshi ...Petitioner in both WPs

Vs.

1.The Commissioner of Income Tax (Appeal),
CIT(A), Coimbatore – 2.

2.The Deputy Commissioner of Income Tax,
Non Corp Circle 4, CBE,
Coimbatore.

3.The Assistant Commissioner of Income Tax,
Non Corp Circle 1 CBE,
Coimbatore. ...Respondents in both WPs

Prayer in W.P.No.4159 of 2022 : Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, calling for the records of the second respondent in his proceedings in DIN & Letter No.ITBA/RCV/F/17/2021-22/ 1035062363(1), quash the order dated 24.08.2021 passed therein and further direct the second respondent to grant an absolute stay of recovery pending disposal of the appeal before the first respondent in CIT(A), Coimbatore-2/10700/2019-20.

Prayer in W.P.No.4165 of 2022 : Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari, calling for the records of the third respondent in his proceedings in DIN & Order No.ITBA/AST/S/143(3)/2019-20/1023168061(1), quash the assessment order dated 26.12.2019 passed herein.

For Petitioner : Mr.R.L.Ramani
(in both Wps) Senior Counsel

For Respondents : Mr.A.P.Srinivas
(in both WPs) Senior Standing Counsel

COMMON ORDER

The prayer sought for in W.P.No. 4159 of 2022 is for a writ of certiorarified mandamus, to quash the proceedings of the second respondent in DIN & Letter No.ITBA/RCV/F/17/2021-22/ 1035062363(1) dated 24.08.2021 and further direct the second respondent to grant an absolute stay of recovery pending disposal of the appeal before the first respondent in CIT(A), Coimbatore-2/10700/2019-20.

2. The prayer sought for in W.P.No.4165 of 2022 is for a writ of certiorari, to quash the proceedings of the third respondent in DIN & Order No.ITBA/AST/S/143(3)/2019-20/1023168061(1), dated 26.12.2019.

3. Since the issue raised in both the Writ Petitions is inter-connected and arising out of the same assessment order, with the consent of the learned counsel appearing for both sides, these writ petitions are taken up for hearing and are disposed of by this common order.

4. That in respect of the Assessment Year 2017-18, there was a scrutiny assessment under Section 143(3) of the Income Act, 1961 (in short 'the Act') by assessment order dated 26.12.2019.

5. Against the said assessment order, petitioner has already filed an appeal before the Commissioner of Income Tax (Appeal) [in short, "CIT(A)"] and the appeal is still pending. In the meanwhile, the petitioner had filed a petition under Section 220(6) of the Act seeking for stay of the demand. The said application having been considered was disposed of by order dated 24.08.2021, where the Assessing Authority directed the assessee to pay 20% of the demand as a condition precedent for grant of stay for the remaining 80% of the demand. Aggrieved over the same, the present writ petition has been filed in W.P.Nos.4159 of 2022. Simultaneously, the petitioner filed writ petition in W.P.No.4165 of 2022 challenging the assessment order dated 26.12.2019.

6. Heard Mr.R.L.Ramani, learned Senior Counsel appearing for the petitioner/assessee, who would submit that, in the order dated 24.08.2021 passed under Section 220(6) of the Act, though it has been stated that, in order to give one more opportunity as the earlier incumbent, who dealt with 220(6) petition has changed, a notice was given. However, there has been no date

given for personal hearing and only a date was given directing the petitioner/assessee to file additional documents, if any through online.

7. Since it was the notice only to give the additional documents and no personal hearing was given, those additional documents had not been filed. However, without giving any personal hearing, the respondent Assessing Authority has proceeded to dispose the said application under Section 220(6) of the Act, whereby he had directed the petitioner /assessee to pay 20% of the demand within 15 days. Therefore, this order is in violation of principles of natural justice, therefore, on that ground itself, the order impugned is liable to be set aside, he contended.

8. Insofar as the challenge made in W.P.No.4165 of 2022 i.e., assessment order dated 26.12.2019 is concerned, the petitioner wanted to take the minute details with regard to the reasons stated by the Assessing Authority, who passed the assessment order under Section 143(3) of the Act.

9. However, Mr.A.P.Srinivas, learned Senior Standing Counsel appearing for the respondent/Revenue would submit that, insofar as the order dated 24.08.2021 under Section 220(6) of the Act passed by the Assessing Authority is concerned, it is a well considered order, where only a 20% of the demand was directed to be paid, that means, if the 20% of the demand is paid, the remaining 80% would be stayed till the disposal of the appeal, which is a well considered and very reasonable order within the meaning of Section 220(6) of the Act. Therefore, it does not require any interference.

10. Insofar as the challenge made in other writ petition against the assessment order dated 26.12.2019 is concerned, the learned Senior Standing Counsel, would submit that as against the very same assessment order, since appeal has been entertained and it is pending, he cannot once again invoke the extraordinary jurisdiction of this Court by filing the present writ petition challenging the very same assessment order. Therefore, on that ground itself, the said writ petition is liable to be rejected, he submitted.

11. 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.

12. Insofar as the points raised by the learned Senior Counsel appearing for the petitioner as against the order dated 24.08.2021 passed under Section 220(6) of the Act is concerned, based on the application submitted by the petitioner, having considered those reasons cited in the said petition, in order to give one more opportunity, the Assessing Authority has further given time to the petitioner to give additional inputs, if any, through online.

13. In response to the same, the petitioner has not chosen to give any additional inputs.

14. In this context, though the learned Senior Counsel would contend that, it was the time only for supplying of additional input and there was no opportunity of being heard was given and no date has been mentioned, it can very well be construed as a violation of principles of natural justice as without giving proper opportunity of being heard to the petitioner this order was passed, this Court is not impressed with the said submission made by the learned Senior Counsel appearing for the petitioner / assessee for the reason that, since it is a 220(6) proceedings, which is a summary proceedings that too with the discretion of the Assessing Authority, such petition can be disposed of, of-course by imposing certain condition depending upon the facts of the case, where the facts mentioned in the very petition itself is enough to be considered for disposing such application. However, in the present case, in view of the change of incumbent, one more chance was given to the assessee to give additional input, if any, that opportunity admittedly had not been utilized by the petitioner/assessee, therefore, this Court has no hesitation to hold that it is not a case, that can be categorized that there has been no opportunity given to the petitioner. Therefore, in that view of the matter, it is not the case of violation of principles of natural justice. Therefore, on that ground, the petitioner cannot successfully challenge the impugned order dated 24.08.2021. Hence, the challenge made against the said order fails.

15. In respect of the challenge made against the assessment order dated 26.12.2019 in W.P.No.4165 of 2022 is concerned, as has been rightly pointed out by the learned Senior Standing Counsel appearing for the revenue, the assessee has already filed an appeal before the CIT(A), which is yet to begin, stated to be pending and only during the pendency of the appeal, now the 220(6) petition was filed, which was considered and decided by the Assessing Authority. Therefore, the

petitioner/assessee cannot make further challenge in respect of the very same assessment order dated 26.12.2019, which is a subject matter before the Appellate Authority. Therefore, on that ground, this Court is not inclined to entertain the writ petition i.e., W.P.No.4165 of 2022. Hence, the same is liable to be rejected.

16. Having regard to the said facts and circumstances of the case and the discussions herein above made, this Court is inclined to dispose of these two writ petitions with the following terms:-

- Both writ petitions are dismissed. However, it is open to the petitioner to make a fresh application to the Appellate Authority i.e., the CIT(A), where whatever the points he wants to raise by taking into account the reasons stated by the Assessing Authority in the assessment order dated 26.12.2019 apart from, further reasons, which the assessee wants to make it for convincing the Appellate Authority to get a stay of the demand during the pendency of the appeal and such application, if it is made before the Appellate Authority within a period of 30 days from today, the same shall be considered by the Appellate Authority on merits and in accordance with law, unmindful of the reasons stated by the Assessing Authority in the order impugned dated 26.12.2019 and the same can be independently decided by the Appellate Authority on merits.

17. With these observations, both the Writ Petitions are dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

mp/sp
To
1.The Commissioner of Income Tax (Appeal),
CIT(A),
Coimbatore – 2.

2.The Deputy Commissioner of Income Tax,
Non Corp Circle 4, CBE,
Coimbatore.

3.The Assistant Commissioner of Income Tax,
Non Corp Circle 1 CBE,
Coimbatore.

+1 CC to Mr.A.P.Srinivas, Advocate sr 13452
+2 Ccs to M/s.C.P. Priya, Advocate sr 12919.

W.P.Nos.4159 & 4165 of 2022

AD(CO)
SP(22/03/2022)