IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.02.2022

CORAM :

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

Writ Petition No.3741 of 2022
and W.M.P.No.3888 of 2022

Tara Jewellery
Represented by its Partner Paras K Soni
61, West Bashyakaralu Road, R.S.Puram
Coimbatore – 641 002. …. Petitioner

-Vs-

1.The Assistant Commissioner of Income Tax
Non-Corporate Circle-2
Coimbatore.

2.Principal Commissioner of Income Tax
Race Course Road, Coimbatore-63.

3.The Commissioner of Income Tax (Appeal)
Coimbatore. …. Respondents

Prayer : Writ Petition under Article 226 of the Constitution of India praying for the issuance of a Writ of Mandamus directing the 2nd respondent to consider and pass orders on the representation dated 29.12.2021 submitted by the petitioner requesting to grant stay the collection of tax for the AY 2017/2018 till the disposal of Appeal pending before the 3rd respondent.

For Petitioner : Mr.Thanjai P.N.Chezhian

For Respondent : Mr.A.P.Srinivas
Senior Standing Counsel

O R D E R

The prayer sought for herein is for a Writ of Mandamus directing the 2nd respondent to consider and pass orders on the representation dated 29.12.2021 submitted by the petitioner requesting to grant stay the collection of tax for the AY 2017-2018 till the disposal of Appeal pending before the 3rd respondent.

2. In respect of Assessment Year 2017-18, there was an assessment order against the petitioner, under which the tax due was Rs.5,19,00,000/-. As against the said assessment order, the petitioner preferred an appeal before the Commissioner of Income Tax (Appeals) and the said appeal is said to be pending till date.

3. During the pendency of the appeal, the petitioner made an application for stay of the demand under Section 220(6) of the Income Tax Act, 1961 (In short, 'the Act'). Since that was rejected, against which the petitioner made a further appeal / representation before the Principal Commissioner of Income Tax, which was also rejected, as against which the petitioner has filed a writ petition, where a remand order has been passed by this Court, pursuant to which, considering the said application submitted by the petitioner for Stay, the Principal Commissioner of Income Tax, Coimbatore, by his proceedings dated 25.09.2020 passed the following order.

> " 8.0. Considering all the facts and the incomes declared by the assessee and in the absence of inclination to pay any disputed tax, I am of the considered view that the demand can be stayed subject to payment of 20% of the disputed taxes as per Circular No.1914 of the Central Board of Direct Taxes till the disposal of appeal by Commissioner of Income Tax (Appeals). Though the assessee has not asked, considering the present situation this 20% is directed to be paid either in one lump sum or in 18 monthly equal installments starting from 15th day from the date of receipt of this order. If this is not complied with, the installment facility and the stay would stand withdrawn automatically without any further notice and the entire demand shall be recovered."

4. As against the said order also, though the petitioner filed a writ petition, it was subsequently withdrawn. Therefore, the order passed by the Principal Commissioner dated 25.09.2020 has become final insofar as the conditional order is concerned. However, according to the learned counsel for the petitioner, due to COVID-19 situation, he could not comply with the said order. On 27.11.2020, the petitioner made an attempt by filing an application by paying a sum of Rs.20,00,000/- alone to give further time. Thereafter, through a garnishee order, the Revenue had recovered a sum of Rs.23,00,000/- from the account of the petitioner and thereafter Rs.2,00,000/- and odd also had been recovered. Therefore, altogether so far Rs.46,00,000/- has been recovered from the petitioner out of Rs.1,03,00,000/- being 20% of the total demand of Rs.5,19,00,000/-.

5. At this juncture, now the present writ petition has been moved seeking a Writ of Mandamus as prayed for. Reiterating the aforesaid prayer, the learned counsel for the petitioner seeks the indulgence of this Court that, if some breathing time is given, the remaining amount of Rs.47,00,000/- of the total Rs.1.03 Crores being 20% of the total demand would be paid by the petitioner/assessee.

6. However, Mr.A.P.Srinivas, learned Senior Standing Counsel would submit that, already long rope has been given and by order dated 25.09.2020, the Revenue has given easy installments ie., 18 installments to pay 20% of the demand and that chance has not been utilized and subsequently he paid only Rs.20,00,000/- being 10%. Thereafter, a sum of Rs.25 to Rs.26 lakhs were recovered and therefore, even now only 10% of the demand has been recovered from the petitioner and remaining 10% is still to be paid by the petitioner. Hence, at this juncture, the petitioner cannot seek any indulgence of this Court by seeking a Writ of Mandamus with the aforesaid prayer and seeks the dismissal of this writ petition.

7. I have considered the submissions made by the learned counsel for the petitioner and the learned Senior Standing Counsel appearing for the Revenue and have considered the materials placed on record.

8. Now the issue is, whether some more breathing time can be given to the petitioner / assessee to pay the remaining amount ie., Rs.47,00,000/- out of Rs.1.03 Crores being 20% of the total amount, which in fact was directed to be paid by way of 18 installments by the order of the Principal Commissioner by order dated 25.09.2020 while granting the order of stay of the demand.

9. Though the said order was passed in September 2020, till date only 50% of the 20% conditional order has been paid. Thereby, only 10% of the total demand alone has been paid. The remaining 10% necessarily has to be paid, without which the petitioner cannot seek the benefit of stay pending appeal before the Commissioner of Income Tax (Appeals).

10. Therefore, in order to balance the interest of both sides and taking into account the indulgence already shown by the Principal Commissioner of Income Tax by his order dated 25.09.2020, where he has already given 18 installments, where, though belatedly, the petitioner had paid Rs.46,00,000/- which is being 10% of the 50% conditional order, this Court is inclined to dispose of this writ petition by passing the following order.

- That the petitioner shall pay the remaining amount of Rs.47,00,000/- being 10% of the total demand in two installments. The first installment, ie., 50% of Rs.47,00,000/- shall be paid by the petitioner/assessee within 30 (thirty) days from today and the remaining 50% shall be paid in the next 30 days.

- It is made clear that, if the petitioner/assessee fails to comply with this condition, the stay granted by the Principal Commissioner vide his proceedings dated 25.09.2020 shall stand automatically vacated and out of which the petitioner cannot seek any shelter further.

- Once the condition imposed above is complied with by the petitioner in time, the stay granted by the Principal Commissioner of Income Tax by proceedings dated 25.09.2020 shall continue till the disposal of the appeal filed and is pending before the appellate authority against the original assessment order.

- It is further made clear that, if the order passed by this Court is complied with in full, the respondents shall withdraw the garnishee order already issued in this regard by the banker of the petitioner.

With the above observations and directions, this writ petition is disposed of by remitting the matter to the assessing authority to do the needful as indicated above. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS-VII)

//True Copy//

Sub Assistant Registrar

KST

To

1.The Assistant Commissioner of Income Tax
Non-Corporate Circle-2
Coimbatore.

2.Principal Commissioner of Income Tax
Race Course Road,
Coimbatore-63.

3.The Commissioner of Income Tax (Appeal)
Coimbatore.

+1cc to Mr.A.P.Srinivas, Advocate, S.R.No.11463
+1cc to Mr.K.M.Balaji, Advocate, S.R.No.11749

W.P.No. 3741 of 2022

KK(CO)
SB(23/03/2022)