IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 28.02.2022

CORAM:

THE HON'BLE MR.JUSTICE R.SURESH KUMAR

W.P.NO.4132 OF 2022
AND
W.M.P.NOS.4266 TO 4268 OF 2022

Susmita Dinesan
... Petitioner

Vs.

Income Tax Officer
Non-Corporate Ward 17(7)
Income Tax Office - BSNL Tower,
No.16, Greams Road,
Chennai - 600 006.
... Respondent

Prayer : Writ Petition filed under Article 226 of Constitution of India praying for issuance of a Writ of Mandamus, calling for the records of the respondent contained in its order, dated 07.02.2022 bearing No.ITBA / COM / F / 17 2021-22 / 1039483635 (1) for Assessment Year 2011-12 for PAN : AGWPD6343H and to quash the same as illegal, arbitrary and unjust and consequently, direct the respondents to forbear from taking any further steps towards the recovery of the demand issued pursuant to the assessment order, dated 16.12.2019 issued for the Assessment Year 2011-12 pending disposal of the petitioner's appeal by the Commissioner of Income Tax (Appeals), Chennai.

For Petitioner : M/s.Suhrith Parthasarathy

For Respondent : Mr.D.Prabhu Mukunth Arunkumar
Junior standing counsel

ORDER

The prayer sought for herein is for a writ of certiorarified mandamus calling for the records of the respondent contained in its order, dated 07.02.2022 bearing No.ITBA / COM / F / 17 2021-22 / 1039483635(1) for Assessment Year 2011-12 for PAN : AGWPD6343H and to quash the same and consequently, direct the respondents to forbear from taking any further steps towards the recovery of the demand issued pursuant to the assessment order, dated 16.12.2019 issued for the Assessment Year 2011-12 pending disposal of the petitioner's appeal by the Commissioner of Income Tax (Appeals), Chennai.

2. For the Assessment Year 2011-12, there has been an order of assessment, dated 16.12.2019, which according to the petitioner has never been served on her and only at the time of getting the penalty proceedings under Section 271(1)(c) of the Income Tax Act 1961 (in short "the Act"), she was able to receive the assessment order, dated 16.12.2019 from the faceless assessment centre only on 23.12.2021. Thereafter she filed the appeal before the CIT (Appeals) against the assessment order, dated 16.12.2019 on 24.01.2022.

3. In the meanwhile, the petitioner had filed an application under Section 220 (6) of the Act to the respondent who is the Assessing Authority on 22.01.2022, seeking for a stay of the demand by treating the assessee, who is not in default.

4. However, the said application submitted by the petitioner before the respondent has now been rejected through the impugned order, dated 07.02.2022 stating the reason that, the petitioner should approach the Appellate Authority to file such an application for stay. Aggrieved over the same, the present writ petition has been filed.

5. Mr.Suhrith Parthasarathy, learned counsel appearing for the petitioner would state that, though the assessment order was dated 16.12.2019, it was not served upon the petitioner and according to her, it was not at all available in the e-portal also and despite her filing of multiple grievance petitions and sending repeated email reminders to the respondent requesting a copy of the assessment order, it was provided to her and she received a copy of the assessment order, dated 23.01.2022 from the ACIT faceless assessment centre in the course of the penalty proceedings under Section 271(1)(c) of the Act. Therefore immediately she filed an application of stay before the respondent and also filed appeal before the Appellate Authority, where in view of the delay, the appeal is yet to be numbered.

6. However, in the meanwhile, since the petitioner can avail the remedy from the Assessing Authority under Section 220(6) of the Act, such an application was filed, however the same has been rejected citing the reason that the petitioner should approach the Appellate Authority, hence the learned counsel seeks indulgence of this Court.

7. However, Mr.D.Prabhu Mukunth Arunkumar, learned Junior standing counsel appearing for the respondent would submit that, it has to be proved by the petitioner assessee that the assessment order, dated 16.12.2019 has not been served on her so far and she has not received it.

8. Since the appeal has been belatedly filed, admittedly, only on 24.01.2022, i.e., after the filing of the application under Section 220(6) of the Act before the Assessing Authority on 22.01.2022, on considering the said factual matrix, instead of exercising it, it was directed the petitioner to approach the CIT (Appeals) to file the stay petition. Therefore the learned standing counsel would submit that, there is absolutely no infirmity in the said order, dated 07.02.2022, hence he seeks dismissal of this writ petition.

9. I have considered the said rival submissions made by both sides and have perused the materials placed before this Court.

10. It is the claim of the petitioner that, it is a very low stake claim, wherein whether the petitioner has presentable case before the Appellate Authority has to be decided only by the Appellate Authority, for which appeal has been immediately filed, i.e., after receipt of the assessment order from the faceless assessment centre only on 23.12.2021 and in the meanwhile when application for stay was filed, for which the petitioner assessee is entitled to under Section 220(6) of the Act, the same should have been considered on merits, by using his discretion, of course by imposing certain conditions, however, the Assessing Authority, i.e., the respondent herein outrightly rejected the same by directing the petitioner to approach the Appellate Authority.

11. In this context, if we look at the language used in Section 220(6) of the Act, it is the complete discretion of the Assessing Authority to deal with such application filed under the said section and it can be disposed of by the Assessing Authority by using his discretion, of course by imposing certain conditions depending upon the circumstances of the case.

12. When that being so, the present order which is impugned herein, dated 07.02.2022, driving the petitioner to approach the Appellate Authority may not be good reason be construed as a reason that can be given by the Assessing Authority within the meaning of Section 220(6) of the Act.

13. Therefore, in that view of this matter, this Court is inclined to dispose of this writ petition with the following order :

(i) That the impugned order is set aside and the matter is remitted back to the respondent, where the petitioner can make a fresh application also along with an earlier application, where if he needs to make any additional input or reason for considering his application for grant of stay and such application shall be considered and decided by the respondent Assessing Authority by using his discretion, where, if the Assessing Authority wants to impose any conditions with regard to the payment of certain percentage of the demand, that can also be imposed and accordingly, the said application to be filed along with the earlier application can be decided on merits at the earliest possible time.

(ii) In the meanwhile, the petitioner shall also take steps to pursue the appeal filed by her before the Appellate Authority.

14. With these directions, this writ petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS-VII)

//True Copy//

Sub Assistant Registrar

tsvn

To

The Income Tax Officer
Non-Corporate Ward 17(7)
Income Tax Office - BSNL Tower,
No.16, Greams Road, Chennai - 600 006.

+1cc to M/s.Hema Muralikrishnan, Advocate, S.R.No.13240

+1cc to M/s.Suhrith Parthasarathy, Advocate, S.R.No.13147

W.P.No.4132 of 2022

CP(CO)
RLP(22/03/2022)