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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.04.2022

CORAM

THE HONOURABLE MR. JUSTICE R. MAHADEVAN
AND
THE HONOURABLE MR. JUSTICE J. SATHYA NARAYANA PRASAD

W.A. No. 1235 of 2022
and
CMP.No.7810 of 2022

Mr.Mohan Gandhi

..Appellant/Petitioner

Versus

1.Principal Commissioner of Income tax-1
Race Course Road
Coimbatore - 641 018

2.Income Tax Office
Non Corporate Ward 1 (5)
Race Course Road
Coimbatore - 641 018

..Respondents/Respondents

Writ Appeal filed under Clause 15 of the Letter Patent against the order passed by this Court in W.P.No.8647 of 2022 dated 07.04.2022.

WP.No.8647 of 2022: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari Calling for the records pertaining to the order dated 22/03/2022 made in ITBA/COM/F/17/2021-22/1041235370(1) on the file of the first respondent herein and to quash the same.

For Appellant : Mr.M.Velmurugan

For Respondents : Mr.A.P.Srinivas
Senior Panel Counsel

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JUDGMENT

(Judgment of the Court was delivered by R. MAHADEVAN, J.)

This writ appeal arises out of the order dated 07.04.2022 passed in WP.No.8647 of 2022.

2. According to the appellant, the second respondent passed an assessment order on 25.12.2019 demanding tax of Rs.1,52,38,850/-, against which, the appellant preferred an appeal before the first respondent along with stay petition and by order dated 22.03.2022, the stay petition was disposed of, subject to make the mandatory payment of 20% of the disputed demand, by the appellant on or before 31.05.2022, as per the schedule given under:

> "The assessee is directed to remit 10% of the disputed demand on or before 31.03.2022 and another 5% on or before 30.04.2022 which covers to 15% of the disputed demand and the balance 5% of the disputed demand on or before 31.05.2022. Thus, the assessee is required to pay a sum of Rs.15,23,890/- being 10% of the total demand outstanding on or before 31.03.2022, another sum of Rs.7,61,940/- (5% of the disputed demand) on or before 30.04.2022 and a sum of Rs.7,61,940/- on or before 31.05.2022. The assessee shall intimate the compliance of tax payments to the JAO in writing along with copy of the challan evidencing the payment of taxes for record purposes. The JAO shall monitor the installment facility afforded to the assessee and thereafter, stay the balance disputed demand till disposal of appeal by the Commissioner of Income Tax (Appeals) functioning under the National Faceless Appeal Centre (NFAC), New Delhi. In case the assessee fails to comply with the aforesaid installment facility, the entire scheme will be cancelled and the Assessing officer shall enforce collection immediately treating the assessee as "assessee in default"."

Challenging the aforesaid order dated 22.03.2022, the appellant filed WP.No.8647 of 2022, which was disposed of, by order dated 07.04.2022, by permitting him to remit 20% of the disputed amount (20% of Rs.1,52,38,850/-) by way of six equal installments and the same shall be remitted on or before 12th of every succeeding English Calender Month, commencing from April 2022. Aggrieved against the same, the appellant has come up with

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this writ appeal.

3. Mr. M.Velmurugan, learned counsel appearing for the appellant submitted that the assessment is several times higher than the income returned and the same is a high-pitched assessment and hence, the condition to deposit 20% of the disputed demand is arbitrary and unreasonable. Even then, the appellant is inclined to comply with such mandatory deposit, but due to financial constrains, he is unable to make the same by six equal installments as ordered by the learned Judge. Therefore, the learned counsel prayed for some leniency in payment of such mandatory deposit by the appellant.

4. Heard Mr.A.P.Srinivas, learned senior panel counsel appearing for the respondents.

5. Considering the facts and circumstances of the case coupled with the submissions made by the learned counsel for the appellant that though the appellant is willing to remit 20% of the disputed amount, due to his weak financial status, he is unable to do the same, this court modifies the order of the learned Judge, by extending the installments from six to twelve, for remittance of 20% of the disputed demand and the first instalment shall be paid on or before 30.04.2022 and the rest shall be remitted on or before 12th of every succeeding English Calender Month. Accordingly, this writ appeal stands disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (CS III)

//True Copy//
Sub Assistant Registrar

msr
To
1.Principal Commissioner of Income tax-1
Race Course Road, Coimbatore - 641 018
2.Income tax office
Non Corporate Ward 1 (5)
Race Course Road
Coimbatore - 641 018
+1 cc to Mr.M.Velmurugan Advocate sr29303
+1 cc to Mr.A.P.Srinivas Advocate sr29647

W.A. No. 1235 of 2022 &
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aa09/06/2022

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