IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 12.10.2022

CORAM

THE HONOURABLE **DR. JUSTICE ANITA SUMANTH**

W.P.No.27301 of 2022 and
WMP.Nos.26493 & 26495 of 2022

M/s.Aryan Share and Stock Brokers Ltd.,
Represented by its Director Manoj N Shah,
"Shreeji Metropolis", 2nd Floor,
No.7, 7th Cross Street, Shenoy Nagar,
Chennai-600 030. ... Petitioner

Vs

1.The Principal Chief Commissioner of Income Tax,
O/o Principal Chief Commissioner of Income Tax,
No.121, Mahatma Gandhi Road,
Chennai – 600 034.

2.The Income Tax Officer,
Corporate Ward 1(1),
Office of the Income Tax Department,
No.121, Mahatma Gandhi Road,
Chennai – 600 034. ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, to call for the records pertaining to the Impugned Order dated 22.09.2022 passed by the 2nd respondent in proceedings in

DIN & Order No.ITBA/COM/F/17/2022-23/1045820561(1) and PAN AADCA1233H for A.Y. 2017-18 and quash the same.

For Petitioner	:	Mr.Muralikumaran for M/s.McGan Law Firm
For Respondents	:	Mrs.Hema Muralikrishnan Senior Standing Counsel

O R D E R

Heard Mr.Muralikumaran, learned counsel for the petitioner and Mrs.Hema Muralikrishnan, learned Senior Standing Counsel for the respondents.

2.The challenge is to an order passed by the second respondent/Income Tax Officer on a stay application filed by the petitioner seeking interim protection as against the demand raised in an order of assessment dated 21.03.2022 under the provisions of the Income Tax Act, 1961 (in short 'Act') which is pending in first appeal.

3.The petitioner has admittedly filed an application dated 04.05.2022 for interim stay, which is pending before the second respondent. The second respondent has passed an order on 06.05.2022 directing the petitioner to remit a sum of 20% of the outstanding demand as a pre-condition for consideration of the stay application. This direction is contrary to the Act and the Circular bearing F.No.404/72/93-ITCC dated 31.07.2017 as neither contemplate any pre-condition for consideration of a stay application.

4.In fact, all instructions issued by the Central Board of Direct Taxes and several orders passed by this Court have made it very clear that a stay application is to be considered by the assessing authority bearing in mind the trifacta of conditions being existence of a prima facie case, financial stringency and balance of convenience.

5.The Income Tax Act does not contemplate any pre-deposit either at the time of filing of appeal or stay application and it is the discretion of the officer, to be exercised upon a proper consideration of the aforesaid three factors and decide the application directing payment of any portion of the disputed demand from 0% to 100% as he may deem fit and appropriate in the circumstances of a particular case.

6.The petitioner, after receipt of communication dated 06.05.2022, had approached the Principal Commissioner of Income Tax/R1 by way of a stay application. In the course of hearing, the petitioner had agreed to return with a scheme of installments. Since there was no response from the assessee in this regard, despite its assurances, the Principal Commissioner of Income Tax has, vide an internal communication dated 14.09.2022 directed the assessing authority to dispose the application under Section 220(6).

7.The present impugned order has been passed even without hearing the petitioner and contains no reasoning whatsoever for the direction to remit 20% of the impugned demand. As stated in the paragraph supra it is necessary that the authorities take note of the existence or otherwise of a prima facie case, financial stringency and balance of convenience in deciding a stay petition, by way of a speaking order.

8.In light of the discussion as above, the impugned order dated 22.09.2022, which is bereft of any of the aforesaid attributes, is set aside. The petitioner will appear before the second respondent on Wednesday, the 26th day of October, 2022 at 10.30 a.m. and the stay application shall be decided within a period of three (3) weeks thereafter.

9.This writ petition is disposed. No costs. Connected miscellaneous petitions are closed.

12.10.2022

vs
Index : Yes/No
Speaking Order

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DR.ANITA SUMANTH, J.

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