IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 07.11.2022

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THE HONOURABLE **DR. JUSTICE ANITA SUMANTH**

W.P.No.29119 of 2022
and
WMP Nos.28409 and 28412 of 2022

Karangipully Vinothkumar

... Petitioner

Vs

The Income Tax Officer,
Non-Corporate Ward – 3(2), CBE
Coimbatore Main Building,
No.63, Race Course Road,
Coimbatore, Tamil Nadu – 641 018.

... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus calling for the records in the impugned order bearing No.ITBA/RCV/F/17/2022-23/1046493486(1) dated 27.10.2022, passed by the respondent for assessment year 2017-18 and quash the same and consequently, direct the respondent to treat the petitioner as not being indefault as per section 220(6) of the Income Tax Act, 1961.

For Petitioner : Mr.M.V.Swaroop

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

ORDER

Mr.A.P.Srinivas, learned Senior Standing Counsel accepts notice for the respondent and is armed with instructions to enable final disposal of this matter.

2. The petitioner had approached this Court earlier in W.P.No.1858 of 2020 challenging an order of assessment dated 30.12.2019 in relation to assessment year 2017-18 that was passed under the provisions of the Income Tax Act, 1961.

3. That Writ Petition was disposed on 29.09.2022 recording the position that the petitioner had challenged the assessment order by way of statutory appeal and had inter alia moved the Authority by way of stay application under Section 220(6) of the Act. The stay application has come to be dismissed by way of impugned order dated 27.10.2022 that contains a fatal flaw, being that the Assessing Authority proceeds on the basis that there is a pre-condition for deposit of 20% of the total demand for the grant of stay till disposal of first appeal.

4. This view patently erroneous insofar as the Income Tax Act does not provide for any pre-condition for grant of stay of recovery, as this Court has made clear on several occasions.

5. The Office Memorandum (OM) referred to by the Assessing Authority in F.No.404/72/93-ITCC dated 31.07.2017 only increases the rate of disputed demand from 15% as set out under Instruction No.1914 dated 21.03.1996 to 20%. However, the actual tax to be demanded, ranging from 0% to 100%, would depend upon the existence of three factors, viz., (i) prima facie case, (ii) financial stringency and (iii) balance of convenience and it is only upon a consideration of the aforesaid factors that the officer would dispose an application for stay.

6. This discussion does not find place in the present impugned order and rather, the Assessing Authority proceeds on the basis that 20% is the standard demand that the petitioner must be called upon to remit.

7. In such circumstances, impugned order dated 27.10.2022 is quashed. The stay petition is restored to the file of the Assessing Officer, who shall call upon the assessee, consider materials, if any, placed by the assessee before him in support of the aforesaid three conditions and pass orders upon the stay application, within a period of six (6) weeks from today. Till such time, no recovery proceedings shall be initiated.

Dr.ANITA SUMANTH,J.

8. This Writ Petition is disposed as above. No costs. Connected Miscellaneous Petitions are closed.

07.11.2022

Index : Yes / No
Speaking Order/Non-speaking order
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To

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