IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 18.11.2022

CORAM

THE HONOURABLE **DR. JUSTICE ANITA SUMANTH**

W.P.Nos.30667 and 30757 of 2022
and
WMP Nos.30101, 30103, 30193 and 30194 of 2022

Saravanan Arumugam

... Petitioner in both W.Ps

Vs

1. The Income Tax Officer,
   Non-Corporate Ward – 10(3)
   Room No.617, Sixth Floor,
   Chennai – Wanaparthy Block,
   121, Mahatma Gandhi Road,
   Nungambakkam, Chennai – 600 034.

2. The Income Tax Officer,
   National Faceless Assessment Centre,
   Income Tax Department,
   Ministry of Finance,
   Room No.401, 2nd floor, E-Ramp,
   Jawaharlal Nehru Stadium,
   Delhi – 110 003.

3. The Commissioner of Income Tax (Appeals),
   National Faceless Appeal Centre, Delhi.

... Respondents in both W.Ps

PRAYER in W.P.No.30667 of 2022: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari calling for the records in DIN:ITBA/AST/S/147/2021-22/1042029170(1) dated 30.03.2022 on the file of the 2nd respondent relating to AY 2014-15 and quash the same.

PRAYER in W.P.No.30757 of 2022: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari calling for the records in DIN:ITBA/COM/F/17/2022-23/1046101805(1) dated 29.09.2022 on the file of the 2nd respondent relating to AY 2014-15 and quash the same.

In both W.Ps
For Petitioner : Mr.N.Murali

For Respondent : Mrs.Hema Muralikrishnan
Senior Standing Counsel

COMMON ORDER

Mrs.Hema Muralikrishnan, learned Senior Standing Counsel accepts notice for the respondents and is armed with instructions to enable final disposal of these matters, even at the stage of admission.

2. As far as W.P.No.30667 of 2022 is concerned, I find no merit in this Writ Petition, insofar as the petitioner has filed a statutory appeal challenging order of assessment dated 30.03.2022 passed under the provisions of the Income Tax Act, 1961 (in short 'Act'). The appeal is pending disposal before the appellate authority and hence there is no justification in entertaining the Writ Petition and intevening in the impugned order.

3. In light of the above, W.P.No.30667 of 2022 is dismissed and the petitioner will pusue the appeal before the statutory authority in accordance with law.

4. As far as W.P.No.30757 of 2022 is concerned, the challenge is to order passed by R1 disposing the stay application filed by the petitioner in terms of Section 220(2) of the Act. The officer has vide impugned order dated 29.09.2022 proceeded on the premise that it was a pre-condition for the petitioner/assessee to have remitted 20% of the demand to consider the stay application.

5. This view is 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.

6. 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%, both being suggested rates only. However, the actual amount of tax to be demanded could well range from 0% to 100%, and 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 seeking stay.

7. 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.

Dr.ANITA SUMANTH,J.

8. In such circumstances, impugned order dated 29.09.2022 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 or till disposal of the stay application, whichever is earlier, no coercive recovery proceedings shall be initiated.

9. W.P.No.30757 of 2022 is disposed as above. No costs. Connected Miscellaneous Petitions are closed.

18.11.2022

Index : Yes / No
Speaking Order
sl
To
1. The Income Tax Officer, Non-Corporate Ward – 10(3)
Room No.617, Sixth Floor, Chennai – Wanaparthy Block,
121, Mahatma Gandhi Road, Nungambakkam, Chennai – 600 034.

2. The Income Tax Officer, National Faceless Assessment Centre,
Income Tax Department, Ministry of Finance,
Room No.401, 2nd floor, E-Ramp,
Jawaharlal Nehru Stadium, Delhi – 110 003.

3. The Commissioner of Income Tax (Appeals),
National Faceless Appeal Centre, Delhi.

W.P.Nos.30667 and 30757 of 2022
and
WMP Nos.30101, 30103, 30193 and 30194 of 2022