BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: **07.02.2022**
CORAM:
THE HONOURABLE MR.JUSTICE C.SARAVANAN
W.P.(MD) No.2431 of 2022
and
W.M.P.(MD) Nos.2107 and 2109 of 2022

S.Senthil Kumar ... Petitioner

/vs./

1.The Commissioner (Appellate Authority),
Ministry of Finance Income Tax Department,
Office of the Income Tax Office, Trichy.

2.The Government of India,
Ministry of Finance Income Tax Department,
Office of the Income Tax Office,
Ward 1, Thanjavur. ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, to call for the records of the 2nd respondent in DIN and Letter No.ITBA/COM/F/17/2021-22/1038964069 (1) dated 21.01.2022 and quash the same as devoid of merits consequentially directing the 1st respondent to complete the proceedings of the appeal in Form No.35 in Acknowledgement No.294217681210120 dated 23.01.2020, within the period stipulated by this Court.

For Petitioner : Mr.A.Haja Mohideen, Advocate
For Respondents : Mr.N.Dilipkumar
Standing Counsel

ORDER

This Writ Petition is disposed of at the time of admission, considering the fact that the petitioner has not yet filed any application under Section 220 (6) of the Income Tax Act, 1961 to stay the recovery proceeding pending disposal of the appeal filed by the petitioner on 23.01.2020 against the assessment order dated 21.12.2019. The petitioner is required to redeposit 20% as a condition for staying the recovery proceeding before the respondents.

2.Though, the petitioner has filed an appeal as early as 23.01.2020, it is noted that no steps have been taken for filing appropriate application under Section 220 (6) of the Income Tax Act, 1961. Instead, the petitioner has now come by way of this writ petition as the respondents have attached the bank. Thus, there is no merit in the challenge to the impugned communication dated

21.01.2022 of the 2nd respondent. However, considering the fact that the petitioner has already filed an appeal against the assessment order dated 21.12.2019 before the 1st respondent/the Appellate Authority on 23.01.2020, there shall be a limited stay of further recovery proceeding for a period of 30 days from the date of receipt of a copy of this order, within which time the petitioner shall move an appropriate application under Section 220 (6) of the Income Tax Act, 1961. The submission of the learned counsel appearing for the petitioner that the respondents have already appropriated an amount of Rs.2,44,464/- in the total tax due under the assessment order dated 21.12.2019 of Rs.42,25,188/- stands recorded. All further recovery proceeding will be subject to the disposal of such application.

3.It is made clear that if the petitioner fails to file the said application under Section 220 (6) of the Income Tax Act, 1961, within a period of 30 days from the date of receipt of a copy of this order, the respondents are at liberty to recover the amount due from the petitioner in terms of the Office Memorandum of the Government of India, Ministry of Finance, Central Board of Direct Taxes in F.No.404/72/93-ITCC dated 29.02.2016 without further reference. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

TO

1.The Commissioner (Appellate Authority),
Ministry of Finance Income Tax Department,
Office of the Income Tax Office, Trichy.

2.The Government of India,
Ministry of Finance Income Tax Department,
Office of the Income Tax Office,
Ward 1, Thanjavur.

+1 CC to M/s.N.DILIPKUMAR, Advocate (SR-4867[F] dated 08/02/2022)

W.P.(MD)No.2431 of 2022
07.02.2022

RS(22.02.2022) 2P-4C