BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 24.02.2022
CORAM
**THE HONOURABLE MR.JUSTICE C.SARAVANAN**

W.P(MD).No.3563 of 2022
and
W.M.P.(MD).No. 3116 of 2022

The Secretary,
O.833, Madura Coats Employees and Public
Service Co -operative Housing Society,
No.1, Papanasam Main Road,
Agasthiyarpatti-627 123,
Ambasamudram Taluk,
Tirunelveli District. ... Petitioner

**Vs.**

1.The Commissioner of Income Tax (Appeals)-II
Income Tax Department,
Madurai.

2.The Joint Commissioner of Income Tax
O/o the Joint Commissioner of Income Tax,
Tirunelveli Range,
Tirunelveli.

3.The Assessing Officer,
Income Tax Department,
O/o the Income Tax Officer,
ward - 4, Tirunelveli. ...Respondents

**Prayer** : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a writ of Mandamus, forbearing the Respondents 1 and 2 from initiating recovery proceedings based on the Assessment order passed by the 3rd Respondent in his proceedings dated 30.09.2021 till the disposal of the appeal filed by the petitioner society before the 1st Respondent on 15.12.2021.

For Petitioner : Mr.M.Saravanakumar
For Respondents : Mr.N.Dilipkumar
Senior Standing Counsel

**ORDER**

This writ petition has been filed for a writ of Mandamus forbearing the respondents from initiating recovery proceedings pursuant to the assessment order, dated 30.09.2021 for the assessment year 2016-2017.

2. The petitioner appears to have filed an appeal against the aforesaid assessment order on 15.12.2021 before the Appellate Commissioner under Section 246 A of the Income Tax Act, 1961. The appeal appears to have been not numbered till date by the respondents herein.



3. The learned counsel for the petitioner submits that the petitioner being a society registered under provisions of the Co-operative Societies Act, 1983 and is therefore outside the purview of the Income Tax Act, 1961 and therefore, the petitioner was not liable to pay tax and therefore the petitioner is entitled for an order to restrain the initiation of recovery proceedings pending disposal of the appeal filed on 15.12.2021, with an application to condone the delay.

4.There is no merits in the submission of the learned counsel for the petitioner. The Income Tax Act, 1961 contemplates the specific machinery for granting interim relief under Section 220 (6) to stay the recovery of tax and penalty. It appears that the petitioner has also suffered an order under Section 271 of the Income Tax Act, 1961. The petitioner has also filed an appeal against the aforesaid order though details are not forthcoming from the affidavit filed in support of the present writ petition.

5. Be that as it may, I am inclined to grant the temporary relief to the petitioner for a period of 45 dyas from the date of receipt of copy of this order in order to facilitate the petitioner to file appropriate application before the third respondent under Section 220(6) of the Income Tax Act, within a period of thirty days from the date of receipt of copy of this order. If such application is filed within such time, the said application shall be disposed of by the third respondent within a period of fifteen days thereafter, on merits and in accordance with law in terms of the order in the **Queen Agencies Vs Assistant Commissioner of Income Tax (Circle-1) and others** reported in **(2021) 18 ITR-02 120 (Mad), Aiman Education and Welfare Society Vs National Faceless Appeal Centre and others** reported in **(2021) 439 ITR 631 (Mad)** and **Kannammal Vs Income Tax Officer and others** reported in **(2019) 413 ITR 390 (Mad).**

6. The Writ Petition stands disposed of with the above observations. No costs. Consequently, the connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

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Note : In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

1.The Commissioner of Income Tax (Appeals)-II
Income Tax Department,
Madurai.

2.The Joint Commissioner of Income Tax
O/o the Joint Commissioner of Income Tax,
Tirunelveli Range,
Tirunelveli.

3.The Assessing Officer,
Income Tax Department,
O/o the Income Tax Officer,
ward – 4, Tirunelveli.

+1 CC to M/s.M.SARAVANAKUMAR, Advocate ( SR-8622[F] dated 25/02/2022 )
+1 CC to M/s.N.DILIPKUMAR, Advocate ( SR-8905[F] dated 25/02/2022 )

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24.02.2022

SAR(CO)
KB(15.03.2022) 3P 6C