BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 25.02.2022

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P(MD).No.3611 of 2022
and
W.M.P.(MD).No.3146 of 2022

Trichy District Lorry Owners Association,
Hindusthan Petroleum Corporation Dealers,
No.12/A,East Boulewar Road,
Trichy-620 008.
Represented by its Secretary,
K.Prabakaran ... Petitioner

Vs.

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

2.The Principal Commissioner of Income Tax
Officer of the Principal Commissioner of Income Tax,
V.P. Rathinasamy Nadar Road,
B.B.Kulam, Madurai.

3.The Income Tax Officer, Ward 1 (1),
Office of the Income Tax Officer,
Trichy Main Buildings,
Williams Road,
Cantonment
Trichy – 620 015. ...Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a writ of Mandamus, directing the Respondents to refund the sum of Rs.74,66,660.44 debited on 20.03.2020 for Assessment Year 2017 -18 as due for Income Tax from our Current Account No. 30550046885 maintained in the State Bank of India, Rock Fort City Branch, Trichirappalli–620 002 to the Petitioner along with applicable interest as per the provisions of the Income Tax Act, 1961 on the basis of the Representation of the petitioner dated 29.09.2021 within a time frame that may be stipulated by this Court.

For Petitioner : Mr.R.R.Kannan
For Respondents : Mr.N.Dilipkumar
Senior Standing counsel

ORDER

Heard the learned counsel for the petitioner and the learned counsel for the respondents.

2.The petitioner suffered an assessment order, dated 23.11.2019, for the assessment year 2017-2018, the petitioner also appears to have filed a statutory appeal on 20.12.2019 under Section 246 A of the Income Tax Act, 1961, before CIT (Appeals). An application was also filed to stay the recovery of the amount under Section 220 (6) of the Income Tax Act, 1961. Both these appeal and application have not been disposed of by either the Appellate Commissioner, namely, the first respondent herein or by the second respondent jurisdictional Assessing Officer.

3. During the interregnum, by a communication dated 02.09.2021, the petitioner was informed that a sum of Rs.74,66,660.44 has been transferred to the Income Tax Department on specific order from the Income Tax Department under Section 226 (3) of the Income Tax Act, 1961, dated 20.03.2022 vide Demand Draft No.187960. The petitioner now seeks refund of the amount pending appeal. There is no merits in the present writ petition. Therefore, the present writ petition is liable to be dismissed.

4. The petitioner is required to deposit a sum of rupees equivalent to 20% of the amount determined under the Assessment Order, pending appeal before the Appellate Commissioner. The petitioner is entitled for waiver/stay of the recovery proceedings in terms of Section 220 (6) of the Income Tax Act, 1961.

5. The Hon'ble Supreme Court has clarified in **Principal Commissioner of Income Tax Vs LG Electronics India Private Limited, (2018) 18 SCC 447**. The relevant portion from the said decision reads as under:

> *"6.The impugned order clearly makes no reference to the central issue in the pending appeal or the grievance of the petitioner regarding the order passed by the AO. The impugned order in short is without reasons and is therefore unsustainable in law.*
>
> 7.For the above reasons, the impugned order is set aside and a direction is issued that the petitioner's application will once again be heard by the Principal CIT on merits and without reference to the OM dt. 31st July, 2017, which, on the face of it, appears to curtail his discretion. The Principal CIT will dispose of the application with a reasoned order not later than two weeks from the date of receipt of this order."

6. In **Kannammal Vs Income Tax Officer, (2019) 413 ITR 390**, this Court after examining various decisions of the Courts including that of the Hon'ble Supreme Court has held Trinity Test has to be followed. This view was also recently followed by this Court by order dated, 08.04.2021 in **Queen Agencies Vs The Assistant Commissioner of Income Tax (Circle-1).**

7. since a portion of the tax determined has been recovered from the petitioner, I am inclined to dispose the writ petition with the observation that the third respondent before whom an application was filed under Section 220 (6) of the Income Tax Act, by the petitioner on 17.08.2021 shall dispose the same within a period thirty days from the date of receipt of copy of this order. It is needless to state that before passing such order, the petitioner shall be heard. In case, the petitioner has indeed paid income tax on the demonetised currency received by the petitioner, as it was allowed to sell petroleum products by receiving the consideration in demonetised currency during the period between 09.11.2016 and 30.12.2016 and tax was paid the second respondent may exercise the discretion in terms of the observation rendered in **Principal Commissioner of Income Tax Vs LG Electronics India Private Limited** and pass appropriate orders. All further recovery proceedings pending disposal of appeal are subject to order to be passed by the third respondent on the petition filed by the petitioner on 17.08.2021 under Section 220 (6) of the Income Tax Act, 1961. No costs. Consequently, the connected Miscellaneous Petition is closed,

Sd/-

Assistant Registrar

// True Copy //

/ /2022

Sub Assistant Registrar

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)
Income Tax Department,
National Faceless Appeal Centre,
Delhi.

2.The Principal Commissioner of Income Tax
Officer of the Principal Commissioner of Income Tax,
V.P. Rathinasamy Nadar Road,
B.B.Kulam,
Madurai.

3.The Income Tax Officer, Ward 1 (1),
Office of the Income Tax Officer,
Trichy Main Buildings,
Williams Road,
Cantonment
Trichy – 620 015.

+1 CC to M/s.R.R.KANNAN, Advocate (SR-8659[F] dated 25/02/2022)

+1 CC to M/s.N.DILIPKUMAR, Advocate (SR-9285[F] dated 01/03/2022)

W.P(MD).No.3611 of 2022
25.02.2022

SN
MS/17.03.2022/4P.6C