BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 18.02.2022

CORAM

THE HONOURABLE MR. JUSTICE C.SARAVANAN

Writ Petition (MD) No.5961of 2020

and

W.M.P.(MD)No.5159 of 2020

Karthika Silks,
267/1, Rajapalayam Main Road,
Sankarankovil - 627 756,
Tenkasi District,
A Partnership Firm,
Rep. by its Partner I.Kubendran .. Petitioner

Versus

1.The Principal Commissioner of Income Tax,
O/o. The PCIT, Madurai - 1,
Central Revenue Building,
Bibikulam,
Madurai - 625 002.

2.The Income Tax Officer,
Ward 2, Income Tax Office,
Nellai City Centre,
Tiruchendur Road,
Rahmath Nagar,
Tirunelveli - 627 011. .. Respondents

Petition filed under Article 226 of The Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records pertaining to the impugned order of the second respondent dated 04.02.2020 in DIN & Letter No.ITBA/COM/F/17/2019-20/1024625723 (1) and subsequent attachment notice dated 12.02.2020 in No.ITNS-27, quash the same as illegal, arbitrary and unsustainable and direct the second respondent to keep the collection of tax demanded in abeyance till the disposal of the appeal by the CIT (A), Madurai, and consequently, direct the second respondent to lift the bank attachments to enable the petitioner Firm to continue its bank operations.

For Petitioner : Mr.T.Selvan
For Respondents : Mr.N.Dilipkumar
Senior Standing Counsel

ORDER

Heard the learned counsel for the petitioner and the learned Senior Standing Counsel for the respondents.

2.There is no reason given in the impugned order for rejecting the revision filed by the petitioner.

3.The law on the subject has been clarified by this Court in **Kannammal Vs. Income Tax Officer, Ward1(1), Tiruppur** [W.P.No.3849 of 2019, dated 13.02.2019] reported in **(2019) 413 ITR 390 (Mad),** directing the authorities to consider trinity factors. The relevant portion of the said order reads as under:-

> *''12.The Circulars and Instructions as extracted above are in the nature of guidelines issued to assist the assessing authorities in the matter of grant of stay and cannot substitute or override the basic tenets to be followed in the consideration and disposal of stay petitions. The existence of a prima facie case for which some illustrations have been provided in the Circulars themselves, the financial stringency faced by an assessee and the balance of convenience in the matter constitute the trinity, so to say, and are indispensable in consideration of a stay petition by the authority. The Board has, while stating generally that the assessee shall be called upon to remit 20% of the disputed demand, granted ample discretion to the authority to either increase or decrease the quantum demanded based on the three vital factors to be taken into consideration.''*

4.The above view was also followed by the learned Single Judge of this Court in **M/s.Queen Agencies, Rep. by its Managing Director vs. The Assistant Commissioner of Income Tax (Circle-1), Karaikudi and another** [W.P.(MD)No.5550 of 2020, dated 08.04.2021] reported in **CIT (2021) 18 ITR-OL 120 (Mad)** and **Aiman Education and Welfare Society vs. National Faceless Appeal Centre and others** reported in **2021 (439) ITR 651 (Mad).**

5.Considering the law settled by this Court, which have been referred to by this Court in **M/s.Queen Agencies case** [supra], the impugned order of the second respondent, dated 12.02.2020, is quashed and the case is remitted back to the first respondent to pass orders on merits and in accordance with law keeping note of the above decisions of this Court, within a period of four weeks from the date of receipt of a copy of this order.

6.The Writ Petition is allowed with the above observation. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (AD-II)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

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To

1.The Principal Commissioner of Income Tax,
O/o. The PCIT, Madurai - 1,
Central Revenue Building,
Bibikulam,
Madurai - 625 002.

2.The Income Tax Officer,
Ward 2, Income Tax Office,
Nellai City Centre,
Tiruchendur Road,
Rahmath Nagar,
Tirunelveli - 627 011.

+2 CC to M/s.T.SELVAN, Advocate (SR-7887[F] dated 22/02/2022)

+1 CC to M/s.N.DILIPKUMAR, Advocate (SR-7333[F] dated 21/02/2022)

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18.02.2022

RJ(CO)
KB(03.03.2022) 3P 6C