BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 06.09.2022

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THE HONOURABLE MR. JUSTICE MOHAMMED SHAFFIQ

W.P.(MD).No.17648 of 2022
and
W.M.P.(MD).No.12855 of 2022

Stanley Samraj ... Petitioner

Vs.

The Additional/Joint/Deputy/Assistant Commissioner of Income Tax,
Income Tax Officer,
National Faceless Assessment Centre,
Delhi. ...Respondent

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, by calling for the records pertaining to the impugned order of demand made by the Respondent in ITBA/AST/S/147/2021-22/1041835949(1) dated 28.03.2022 and quash the same and consequently directing the respondent to drop the unnecessary demand made in the said impugned order of demand and thus render justice.

For Petitioner	:	Mr.M.Lakshmanan
For Respondent	:	Mr.N.Dilip Kumar, Standing Counsel.

ORDER

This Writ Petition has been filed challenging the impugned order of demand made by the respondent in ITBA/AST/S/147/2021-22/1041835949(1) dated 28.03.2022 and quash the same.

2. It is submitted by both the learned counsel for the petitioner and the learned Standing Counsel for the respondent that though the present Writ Petition has been filed challenging the impugned assessment order dated 28.03.2022, as against the very same order, an appeal has also been preferred before the Commissioner of Income Tax(Appeals).

3. It is submitted by the learned counsel for the petitioner that based on the impugned order, the respondent is seeking to recover the tax, that are due in terms of the assessment, notwithstanding the fact that an appeal has been filed.

4. In these circumstances, this Court is of the view that the Writ Petition cannot be sustained, inasmuch as the statutory remedy has already been availed and it is settled law principle that once the petitioner has chosen to file an appeal, the Writ Petition may not be entertained, inasmuch as it is not open to the petitioner to ride two horses. Having said that, liberty is granted to the

petitioner to file a stay application before the appropriate authority, within a period of two (2) weeks from the date of receipt of a copy of this order and on receipt of the same, the concerned authority shall dispose of the said stay application within a further period of three (3) weeks. There shall be no recovery of the impugned demand until the disposal of the stay application, if the petitioner files stay application within two (2) weeks from the date of receipt of a copy of this order. If stay application is not filed within two (2) weeks from the date of receipt of a copy of this order, it is open to the respondent to proceed further in accordance with law.

5. This Writ Petition is disposed of accordingly. There shall be no order as to costs. Consequently, connected miscellaneous petition stands closed.

06.09.2022

Index : Yes / No
Internet : Yes/ No
Lm
Note: Issue order copy by 07.09.2022.

To

The Additional/Joint/Deputy/Assistant Commissioner of Income Tax,
Income Tax Officer,
National Faceless Assessment Centre,
Delhi.

MOHAMMED SHAFFIQ, J.

Lm

W.P.(MD).No.17648 of 2022

06.09.2022