BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 23.12.2022

C O R A M

THE HONOURABLE MR.JUSTICE P.D.AUDIKESAVALU

W.P. (MD) No. 27012 of 2022
and
W.M.P. (MD) Nos. 21161 and 21162 of 2022

M/s. Sri Rethinam Agency,
Represented by its Partner,
C.T.Saravanan ... Petitioner

Vs.

1.The Principal Commissioner of Income Tax,
Office of the Principal Commissioner of Income Tax,
Madurai – 625 001.

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

3.The Income Tax Officer,
National Faceless Assessment Centre,
Delhi.

4.The Income Tax Officer,
Non Corporate Ward 1(7),
CR Building, Bibikulam,
Madurai – 2.

5.The Income Tax Officer, (H.Qrs.)-1,
Office of the Principal Commissioner of Income Tax,
Madurai – 625 001. ... Respondents

Prayer: Writ Petition filed under Article 226 of the constitution of India, to issue a writ of Certiorari to call for the records relating to the proceedings of the impugned demand notice in ITBA/AST/S/ 156/2021-22/1042061361(1) dated 30.03.2022 on the file of the Third Respondent and the consequent order in ITBA/COM/F/17/2022-23/ 1044195952(1) dated 28.07.2022 on the file of the Fourth Respondent and the consequential proceedings in ITBA/COM/F/17/2022-23/1047593162(1) dated 23.11.2022 on the file of the Fifth Respondent.

For Petitioner : Mr. K.Jeyamohan

For Respondents : Mr. N.Dilip Kumar, Standing Counsel

O R D E R

Heard Mr. K.Jeyamohan, Learned Counsel for the Petitioner, Mr. N.Dilip Kumar, Learned Standing Counsel for the Respondents and perused the materials placed on record, apart from the pleadings of the parties.

2. The Petitioner had preferred an appeal under Section 246-A of the Income Tax Act (hereinafter referred to as 'the Act' for brevity) before the Second Respondent against the order dated 30.03.2022 passed under Section 147 of the Act by the First Respondent. As the said appeal was under consideration of the Second Respondent, the Petitioner had made an application on 14.07.2022 under Section 220(6) of the Act before the Fourth Respondent not to treat him as an 'Assessee in default' in which an order dated 28.07.2022 had been passed as extracted below:-

> *" The assessee case was completed under Section 147 read with section 144B of the Income Tax Act on 30/03/2022 for AY 2016-17 and the following additions were made:*
>
> *1. Addition on account of unaccounted purchase u/s 69C of Rs.3,21,58,183/-*
>
> *I have gone through the assessment order, I have perused the submissions made by the assessee Firm. Assessee Firm's case does not fall under any of the exclusion clauses as per the CBDT instruction in O.M. No. 1914 dated 21/03/1996 modified vide guideline dated 29/01/2016 and further modified vide*

office memorandum dated 31/07/2017. As per the CBDT instruction vide O.M. in F.No.404/72/93-ITCC dated 29/01/2016 and subsequent O.M. dated 31/07/2017, the Assessing Officer shall grant stay of demand till disposal of appeal on payment of 20% of the disputed demand. In the assessee case for AY 2016-17, the assessee has not paid any taxes against the demand of Rs. 1,91,47,190/- raised vide order u/s 147 read with section 144B of the Income Tax Act dated 30/03/2022 for AY 2016-17.

In view of the above the stay of demand petition of the assessee firm for AY 2016-17 received by the undersigned on 14/07/2022 through ASK is hereby rejected.

Hence the stay of demand petition of the assessee firm for AY 2016-17 received by the undersigned on 14/07/2022 through ASK is hereby dismissed."

The Petitioner has challenged the said order in this Writ Petition.

3. It is highlighted by Learned Counsel for the Petitioner that the impugned order is in contravention of the principles laid down by this Court in ***Kannammal -vs- Income Tax Officer, Ward 1(1), Tirupur*** (Order dated 13.02.2019 in W.P. No. 3849 of 2019), which reads as follows:-

> *"12. The Circulars and Instructions as extracted abvoe 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 basis 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 assessment 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 the 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."

It is also brought to notice that while approving the said decision, this Court in ***Queen Agencies -vs- Assistant Commissioner of Income Tax, Circle-1*** (Order dated 08.04.2021 in W.P. (MD) No. 5550 of 2020) has observed as follows:-

"13. *The order impugned in this writ petition is liable to be set aside as it is absolutely non-speaking. It is true that as pointed out by the learned standing counsel, the stay petition filed by the petitioner is equally bald and bereft of details. But as observed in Kannammal's case, the assessing officer ought to be pro-active. The statutory provision will come into play only if an appeal has been filed before the appellate authority. The case of the assessee would definitely be projected in the appeal memorandum. Therefore, in the light of the stand taken in the appeal memorandum, the Assessing Officer can pass order by applying the trinity principles.*

14. It is needless to say that the petition under Section 220(6) of the Act will have to be filed only before the assessing officer after filing the statutory appeal. The learned standing counsel claim that at present the assessees are indiscriminately filing the stay petitions. They move the appellate authority, the assessing officer and also the Principal Commissioner of Income Tax simultaneously. The Principal Commissioner of Income Tax is only the reviewing authority. It is only when the assessing officer makes a reference or if the assessee is aggrieved by the order passed by the assessing officer, by virtue of Circular dated 29.02.2016, the Principal Commissioner of Income Tax will get the jurisdiction to exercise his power under Section 220(6) of the Act and not otherwise. In other words, he cannot assume the jurisdiction in the first instance. The assessees must also ensure that the petition filed under Section 220(6) of the Act contain all the relevant particulars so that the assessing officer can pass an appropriate order by bearing in mind the trinity principles. The *order passed by the assessing officer will hold good and will have to give away as and when the appellate authority passes an order on the stay petition filed by the assessee/appellant."*

It is apparent from the impugned order that while requiring the Petitioner to pay 20% of the disputed payment by 19.10.2022, his request for stay of the demand has been rejected without even awaiting compliance of the aforesaid requirement, which vitiates the entire proceedings.

4. In such circumstances, the impugned order in DIN & Letter No. ITBA/COM/F/17/2022-23/1044195952(1) dated 28.07.2022, which cannot be sustained, is set aside and the matter is remitted to the Fourth Respondent to be decided afresh taking note of what has been stated supra. It shall be incumbent upon the Fourth Respondent to deal with each of the contentions raised and pass a reasoned order on merits and in accordance with law and communicate the decision taken by 28.02.2023 under written acknowledgment.

5. In the result, the Writ Petition is disposed on the aforesaid terms.

Consequently, connected Miscellaneous Petitions are closed. No costs.

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Index : Yes/No

Note: Issue Order Copy on 25.01.2023.

To

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P.D.AUDIKESAVALU,J.

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W.P. (MD) No. 27012 of 2022

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