BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 13.12.2022

C O R A M

THE HONOURABLE MR.JUSTICE P.D.AUDIKESAVALU

W.P. (MD) No. 27059 of 2022
and
W.M.P. (MD) Nos. 21216 to 21218 of 2022

Thasirkhan Abdul Hameed ... Petitioner

-vs-

1.The Deputy Commissioner of Income Tax,
Non Corporate Circle-1, Income Tax Office,
Madurai MA, No.2 VP Rathinasamy Nadar Road,
CR Building Bibikulam,
Madurai, Tamil Nadu-625 002.

2.The Branch Manager,
Indian Bank,
158, Ashok Nagar,
Koodal Nagar,
Madurai-625 018. ... Respondents

Prayer: Writ Petitions filed under Article 226 of the constitution of India, to issue a writ of Certiorari, to call for the records of the impugned demand order in PAN:AFRPA3435M in DIN & Letter No.ITBA/COM/F/17/2022-

23/1046298048(1), dated 13.10.2022 from the files of the first respondent herein, quash the same.

For Petitioner	:	Ms. Aparna Nandakumar
For R1	:	Mr. N.Dilip Kumar, Standing Counsel
For R2	:	Mr. C.Karthick

O R D E R

Heard Ms. Aparna Nandakumar, Learned Counsel for the Petitioner, Mr. N.Dilip Kumar , Learned Standing Counsel for the First Respondent and Mr. C.Karthick, Learned Counsel for the Second Respondent 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 Commissioner of Income Tax (hereinafter referred to as 'the Appellate Authority' for brevity) against the order dated 31.05.2021 passed under Section 143(3) of the Act by the First Respondent. As the said appeal was

under consideration of the Appellate Authority, the Petitioner had made an application on 08.02.2022 under Section 220(6) of the Act before the First Respondent not to treat him as an 'assessee in default' in which an order dated 13.10.2022 had been passed, as extracted below:-

> *“2. The submissions made in your petitions were carefully considered. In this regard, it is informed that filing of appeal alone cannot be a ground for stay of demand. Further, as per Board's Office Memorandum dated 31st July 2017, the Assessing Officer shall grant stay of demand till the disposal of first appeal subject to collection of 20% of disputed demand. However, till date, o payments have been made by you. Hence, you are hereby requested to pay 20% of the disputed demand immediately and to produce the challan to this office on or before 19.10.2022 to consider your request. Failure if any, action will be taken to collect the demand.*
>
> *3. In view of the above, your petition for stay of demand is rejected and disposed of accordingly.”*

4.

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 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 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/17/2022-23/1046298048(1) dated 13.10.2022, which cannot be sustained, is set aside and the matter is remitted to the First Respondent to be decided afresh taking note of what has been stated supra. It shall be incumbent upon the First Respondent to deal with each of the contentions raised including additional submissions said to have been made on 12.12.2022 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.

13.12.2022
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Index : Yes/No
Note: Issue order copy by 27.01.2023.

To

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P.D.AUDIKESAVALU,J.

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