IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.07.2023

CORAM

THE HON'BLE MR. JUSTICE C. SARAVANAN

W.P.No.7164 of 2022
and
W.M.P.Nos.7189 & 7191 of 2022

M/S. Nanjundapuram PACCS,
Rep., by its Secretary,
No.2/155, Somayanur,
Nanjundapuram,
Coimbatore – 641 108. .. Petitioner

Vs.

1.The Principle Commissioner of Income Tax -1,
8th Floor, Income Tax Annex,
Building No.63, Race Course Road,
Coimbatore – 641 018.

2.The Income Tax Officer,
National Faceless Assessment Center,
New Delhi.

3.The Commissioner of Income Tax (Appeals),
8th Floor, Income Tax Annex,
Building No.63, Race Course Road,
Coimbatore – 641 018. .. Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India praying to issue a writ of certiorarified mandamus, calling for the records relating to impugned stay order in C.No.117(26)/Stay Petition/PCIT-1/2021-22, dated 04.03.2022 passed by the first respondent and quash the said impugned order and thereby directing the third respondent to dispose of the Appeal No.2/10621/2019-20 pending before the third respondent, without insisting upon any payment of any further amount demanded vide the Assessment Order dated 23.07.2021.

For Petitioner : Mr.T.Ramesh

For Respondents : Mr.R.S.Balaji, Standing Counsel
Assisted by Mrs.S.Premalatha,
Junior Standing Counsel

ORDER

The petitioner is aggrieved by the impugned order passed by the first respondent, Principle Commissioner of Income Tax vide order dated 04.03.2022. The petitioner had earlier suffered an adverse assessment order in the hands of the second respondent for the Assessment Year 2018-19 on 23.07.2021.

2. The petitioner had also filed a statutory appeal before the third respondent on 25.08.2021 against order dated 23.07.2023 of the second respondent for the Assessment Year 2018-19 which has been duly acknowledged by the office of the third respondent electronically. The total amount that has been confirmed by the assessment order dated 23.07.2021 of the second respondent comes to Rs.2,12,53,397/- in terms of notice of demand issued under Section 156 of the Income Tax Act, 1967.

3. Under these circumstances, the petitioner applied to the first respondent to stay of recovery proceedings. At the time of filing of the aforesaid stay petition, the petitioner has already pre-depostited 5% of the disputed tax. The first respondent by an order dated 21.01.2022 directed the petitioner to deposit 20% of the amount demanded in accordance with the memorandum dated 31.07.2017 in File No.404/72/93-ITCC, issued by CBDT.

4. In view of the above, the petitioner was required to deposit a sum of Rs.42,50,680/- within 5 days from the date of the aforesaid order dated 21.01.2022. The petitioner applied for the second time before the first respondent again and asked for further concession. Taking note of the pre deposit made by the petitioner, the first respondent by order dated 01.02.2022 directed the petitioner to pay the balance amount in installments within a period of 5 days. Thereafter, the impugned order came to be passed on 10.03.2022. Taking note of the amount pre-deposited by the petitioner, the first respondent directed the petitioner to deposit 15% of the balance amount within a period of 7 days. At the time of admission of this writ petition, there is a direction to the petitioner to deposit another 5%.

5. Learned counsel for the petitioner submits that the aforesaid amount has been complied with. Learned counsel for the respondents also confirms the same.

6. In support of the present writ petition, the learned counsel for the petitioner has placed reliance on a decision of this Court rendered in ***The Katpadi Cooperative Township Ltd., vs. The Assistant Commissioner of Income Tax and Others*** reported in ***2014 SCC OnLine Mad 8756***.

7. On behalf of the respondents, the learned counsel for the respondents submit that the petitioner has to comply with the order impugned by pre-depositing 10% and therefore, the writ petition is liable to be dismissed.

8. Learned counsel for the respondents further relied on the decision of this Court recently rendered in ***Air Liquide Medical Systems Private Limited Vs. The Deputy Commissioner of Income Tax Corporate Circle 1(1), Chennai and Others*** in ***W.P.No.2232 of 2022*** rendered on 14.02.2022 whereby, this Court has directed the petitioner therein to deposit 15% instead of 20%. Hence, the learned counsel for the respondents submit that the petitioner should atleast directed to pre-deposit 15%.

9. I have considered the arguments advanced by the learned counsel for the petitioner and respondents. The Hon'ble Supreme Court has clarified the provision in ***PCIT vs. M/s LG Electronics India Pvt. Ltd.,*** reported in ***[2018] 18 SCC 447.*** This view has been followed by this Court in the case of ***The Katpadi Cooperative Township Ltd.,***(supra).

10. The learned counsel for the petitioner submits that the petitioner undertakes to pay another 5% in the light of the decision of the learned Single Judge as affirmed by the Division Bench.

11. Recording the above submission, the petitioner is directed to deposit another 5% of the disputed tax within a period of four weeks from the date of receipt of copy of this order. The Commissioner of Income Tax is directed to dispose of the appeal on merits and in accordance with law, within a period of three months from the date of receipt of copy of this order.

12. Accordingly, this Writ Petition is allowed. Consequently, connected miscellaneous petitions are closed. There shall be no order as to costs.

25.07.2023

Index:Yes/No
Neutral Citation:Yes/No

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C.SARAVANAN,J.

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