IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.09.2023

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.No.25825 of 2023
and
W.M.P.No. 25274 of 2023

Mariasanjeevee Anthoniswamy,
55-B, Nandhini Priya Complex,
Kuppichipalayam Road,
Periyanaickenpalayam,
Coimbatore – 641 020. ... Petitioner

Vs

1. Directorate General of Income Tax, INV,
   No. 221, New Building-II Floor,
   Chennai Building,
   No. 121, Mahatma Gandhi Road,
   Nungambakkam, Chennai – 600 034.

2. The Commissioner of Income Tax, Appeal-19,
   No. 46(108), Investigation Building,
   Uthamar Gandhi Road, Nungambakkam,
   Chennai – 600 034.

3. The Assistant Commissioner of Income Tax,
   Central Circle 2, CBE,
   63, Race Course Road,
   Coimbatore – 641 018. ... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorarified Mandamus, to quash the impugned notice dated 25.07.2023 issued by the 1st respondent bearing DIN & Letter No.ITBA/COM/F/17/2023-24/1054584189(1) for AY 2013-14 and consequently direct the 2nd respondent to take up the appeal on early hearing which is filed before the Commissioner of Income Tax Appeals -19.

For Petitioner	:	Mr.M.Velmurugan
For Respondents	:	Mr.A.N.R.Jayaprathap Junior Standing Counsel

ORDER

Mr.A.N.R.Jayaprathap, learned Junior Standing Counsel takes notice on behalf of the respondents.

2. The petitioner is aggrieved by the impugned notice dated 25.07.2023, whereby, the petitioner's application for hearing of the Appeal against the Assessment order dated 21.03.2022 has been rejected on the ground of law, pendency of large number of high pitch cases before the Appellate Commissioner.

3. The learned counsel for the petitioner has placed reliance on the decision of this Court rendered in W.P.No.10380 of 2022 in the case of ***British Agro Products (India) P Ltd.,*** Vs. ***The Principal Chief Commissioner of Income Tax- 1 and others*** vide order dated 26.04.2022 and CBTD Circular bearing reference F.No.279/Misc./M-102/2021-ITJ dated 29.12.2021. It is submitted that though the amount involved is more than a crores and the petitioner is being subjected to genuine hardship, the petitioner's appeal has not be taken up disposal.

4. The learned Junior Standing Counsel for the respondents would placed reliance on the decision of this Court in W.P.Nos.22711 of 2022 batch etc., in the case of ***I.Vetrivel*** Vs. ***Director General of Income Tax (Inv) and others*** vide order dated 17.10.2022.

5. It is submitted that the Appellate Commissioner is overloaded with several appeals and therefore no preference can be given to the petitioner, as it is humanly impossible to take up the appeal.

6. The learned Junior Standing Counsel for the respondents on the other hand would submit that, it is always open for the petitioner to file an appropriate application to stay the recovery proceedings either before the Appellate Commissioner or before the appropriate Authority in accordance with the provisions of the Indirect Taxes.

7. I have considered the arguments advanced by the learned counsel for the petitioner and the learned Junior Standing Counsel for the respondents.

8. The case of the petitioner *prima facie* appears to be covered by the CBTD Circular bearing reference F.No.279/Misc./M-102/2021-ITJ dated 29.12.2021 of the Central Board of Direct Taxes which reads as under:

> "It has come to notice that many taxpayers have requested for priority/out of turn hearing of their appeals pending with CsIT (AU) and/or CIT(A). With a view to address the issue it is decided that requests covering genuine and exceptional circumstances, raised at the instance of the appellant, may be considered by the Pr.CCIT NFAC and CcsIT of Central Charges and international Taxation, on the basis of recommendations of jurisdictional

> Pr.CIT/Pr.CIT(Central)/CIT(IT), in the following situations:-
>
> (i)Case having demand above Rs. 1Cr,
>
> (ii)Cases where refunds, as originally claimed in ITR, are in excess of Rs.1,00,000/-,
>
> (iii)Cases where directions to this effect have been issued by courts,
>
> (iv)Cases where request is made by senior citizens and/or super senior citizens,
>
> (v)Any other case of genuine hardship."

9. However, it has to be noted that there are several high pitched appeals are pending along with the regular appeals before the Appellate Commissioner. It would be humanly impossible to the Appellate Commissioner to take up the petitioner's appeal against the Assessment order dated 21.03.2022. It would be unfair if the petitioner's case is taken up out of turn overlooking the other pending appeals of other assessees.

10. Considering the above, Court is inclined to give liberty to file appropriate application to stay recovery proceedings. In case, the petitioner moves such application within a period of four weeks from the date of receipt of a copy of this order, such application may be

considered and disposed of the same on merits and in accordance with law by the appropriate Authority. Pending such exercise, the respondent shall keep all recovery proceedings in abeyance.

11. This Writ Petition is disposed of. No costs. Consequently, connected Writ Miscellaneous Petition is closed.

11.09.2023

Index : Yes/No
Internet : Yes/No
Speaking Order/Non-Speaking Order
Neutral Citation : Yes/No
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To

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C.SARAVANAN, J.

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