



W.P.No.29053 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.10.2023

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The Honourable **Mr.Justice Krishnan Ramasamy**

W.P.No.29053 of 2023

and

W.M.P.Nos.28640 and 28641 of 2023

Ramasamy Rajkumar

...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

Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus, to call for records relating to order in C.No.117(26) stay petition/PCIT-1/23-24 dated 31.08.2023, passed by the first respondent and to quash the same and



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thereby, to direct the third respondent to dispose of the pending Appeal without insisting upon payment of any amount of pre-deposit.

For Petitioner : Mr.T.Ramesh

For Respondents : Mr.R.S.Balaji
Senior Standing Counsel

ORDER

With consent, the main Writ Petition itself is taken up for final disposal at the stage of admission itself.

2. In this Writ Petition, the petitioner has challenged the order passed by the Principal Commercial of Income Tax-I, Appellate Authority, the first respondent in a Petition for Stay, in C.No.117(26) stay petition/PCIT-1/23-24, dated 31.08.2023.

3. The second respondent, Income Tax Officer passed an assessment order, dated 21.03.2023, under the provisions of Income Tax Act, 1961 (hereinafter, referred to as 'the Act') whereby, a tax liability of Rs.1,48,54,156/- was determined for the assessment year 2018-19 under



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best judgment assessment on the ground that the petitioner has failed to file returns and apart from demand of tax liability, penalty proceedings were also initiated under Sections 270A, 271 AAC and 272 A(1) (d) of the Income Tax Act, 1961 (for short, 'the Act') and a total demand of Rs.2,44,47,282/- was determined against the petitioner.

4. Aggrieved by the assessment order passed by the second respondent/the Income Tax Officer, the petitioner filed an Appeal before the first respondent/Appellate Authority and along with the Appeal, the petitioner also filed a Petition for Stay and the first respondent/Appellate Authority, by the impugned order, dated 31.08.2023, directed the petitioner to pre-deposit 20% of the tax demanded, which works to Rs.47,89,456/- and granted stay for the balance amount. The petitioner finds that the impugned order requiring the petitioner to pre-deposit 20% of the tax as onerous, which has resulted in filing of this Writ Petition, seeking to quash the said condition.



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5. Mr.T.Ramesh, learned counsel appearing for the petitioner has submitted that the petitioner is engaged in the business of manufacturing handloom sarees. and the total turnover of the petitioner's business itself is only Rupees One Crore and by virtue of the impugned order, the petitioner was directed to 20% of tax, which comes to Rs.47,89,456. The learned counsel submitted that the petitioner is a just a handloom weaver, and hence, he would be unable to muster so much amount within a short span of time, and therefore, requested for consideration of reduction of the deposit amount,

6. Mr.R.S.Balaji, learned Senior Standing Counsel, who accepts notice on behalf of the respondents would submit that since the petitioner failed to file returns, the second respondent passed the assessment order, dated 21.03.2023 and though the petitioner filed Appeal against the said order, since a sum of Rs.1,36,79,856/- is in cash rotation on the petitioner's bank account, the Appellate Authority imposed the condition of pre-depositing 20% of the tax and same is only reasonable and not onerous as contended by the petitioner.



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WEB COPY 7. Heard the learned counsel for both the parties and perused the materials on record.

8. After hearing the learned counsels appearing for the parties and perusing the materials placed on record, it could be easily inferred that the grievance of the petitioner is only with regard to conditional stay order passed by the Appellate Authority, whereby, the petitioner is directed to pre-deposit 20% of the demanded tax, which comes around Rs.47,89,456/- for entertaining the Appeal.

9. After noting the factual details of the case, coupled with the further fact that the petitioner is engaged in the manufacturer of Handloom Sarees, this Court is of the view that the impugned order passed by the first respondent/Appellate Authority requiring the petitioner to pay 20% of the tax demand is on the higher side. Therefore, this Court directs the petitioner to deposit Rs.10,00,000/- instead of 20% (which come around Rs.47,89,456/-) of the impugned demand ordered by the Appellate



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Authority within a period of eight weeks, which starts from today. Upon such payment made by the petitioner, the third respondent/Commissioner of Income Tax (Appeals) is directed to entertain the appeal.

10. In the result, the Writ Petition is disposed of on the aforesaid terms. No costs. Consequently, connected Miscellaneous Petition is closed.

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Index : yes/no

Neutral Citation : yes/no



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To

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Krishnan Ramasamy,J.,



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