IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.07.2023

CORAM

THE HON'BLE MR. JUSTICE C. SARAVANAN

W.P.No.34008 of 2022
and
W.P.Nos.13579 of 2023, 33469 & 33470 of 2022

Sukumar Dhanapal .. Petitioner

Vs.

1.Income Tax Officer,
Non Corporate Ward 9(1) Che,
Wanaparthy Block,
121, Mahatma Gandhi Road, Nungambakkam,
Chennai – 600 034.

2.Principal Commissioner of Income Tax-1,
121, M G Road, Nungambakkam,
Chennai – 600 034.

3.Additional/Joint/Deputy/Assistant Commissioner
of Income Tax/ Income tax Officer,
National Faceless Assessment Centre,
Delhi.

4.Commissioner of Income Tax (Appeals)
National Faceless Assessment Centre,
Delhi. .. 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 on the file of the first respondent in PAN: ATNPD5850F and quash the impugned order in ITBA/RCV/F/17/2022-23/1047416584(1) dated 16.11.2022 for the Assessment Year 2015-16 as illegal, arbitrary, against the principles of natural justice and devoid of merit and consequentially direct the second respondent to grant stay of recovery of demand for the Assessment Year 2015-16 pending disposal of the appeal preferred by the petitioner before the fourth respondent.

For Petitioner : Ms.Vandana Vyas

For Respondents : Mr.Prabhu Mukunth Arunkumar,
Standing Counsel

ORDER

The petitioner has challenged the impugned order passed under Section 220(6) of the Income Tax Act, 1961, directing the petitioner to deposit 20% of the disputed tax as confirmed vide Assessment Order dated 19.03.2022 for the Assessment Year 2015-16.

2. The petitioner has also filed a statutory appeal before the Appellate Commissioner under Section 246(A) of the Income Tax Act, 1961 in Appeal No. NFAC/2014-15/10118937 and therefore, approached the Assessing Officer under Section 220(6) of the Income Tax Act, 1961, which has been disposed with the following observations:-

> *"The AR of the assessee, Smt M M Lavanya and Shri Shrenik Chordia appeared and explained the financial difficulties of the assessee. Considering the facts of the case and reports, the assessee is directed to 20% of the demand in equal instalments before 31.03.2023."*

3. The petitioner has placed reliance on the following circular:-

SL.No.	Date	Instruction No.
1.	21.08.1969	Instruction No.96 [F.No.1/6/69-ITCC]
2.	02.02.1993	Instruction No.1914

4. The petitioner has also placed reliance on the decision rendered in the context of CBDT Instruction No.1914 dated 02.12.1993 in the following cases:-

(i) ***Mrs. Kannammal -vs- Income Tax Officer in***

W.P.No.3849 of 2019 dated 13.02.2019;

(ii) ***KEC International Ltd., -vs- B.R. Balakrishnan & Others in [(2001) 251 ITR 158 (Bom)]***;

(iii) ***Flipkart India (P.) Ltd., -vs- Assistant Commissioner of Income-tax, circle 3(1)(1), Bengaluru [2017] 396 ITR 551 (Karnataka)***;

(iv) ***UTI Mutual Fund -vs- ITO in [2012] 19 taxmann.com 250 (Bom.,)***

5. The petitioner had filed an application under Section 154 of the Income Tax Act for rectification of the Assessment Order dated 19.03.2022. After the writ petition was filed on 13.12.2022, the Assessment Order has been rectified by the respondents, Assessing Officer by an order dated 17.01.2023. In the result, the tax that was confirmed on the petitioner for a sum of Rs.10,90,61,590/- has been now reduced to Rs.5,47,81,210/-.

6. The specific case of the petitioner is that petitioner's son had suffered a serious injury, in the accident, during the month of November 2016 and therefore, the petitioner was unable to concentrate on the business and therefore failed to file return under Section 139 of the Income Tax Act,

in time. The further case of the petitioner is that the notice under Section 148 was issued on 27.03.2021 during the peak Covid-19 after the out break of 2nd wave. Therefore, the petitioner could not file the return as is required pursuant to notice issued under Section 148 of the Income Tax Act. However, the petitioner responded to reply show cause notice dated 12.03.2022. On 14.03.2022 which was acknowledged by the respondent. It is submitted that the respondents have not taken note of the expenses which incurred by the petitioner in connection with the business carried out by the petitioner which is sale and purchase of Fish. Meanwhile, the petitioner had filed an appeal before the Appellate Commissioner in Appeal No. NFAC/2014-15/10118937, the said appeal was also fixed for a personal hearing on 19.07.2023. It is informed that the orders are awaited.

7. Learned counsel for the respondents on the other hand would submit that although the Assessment Order dated 19.03.2022 for the Assessment Year 2015-16 has been modified by an order passed under Section 154 of the Income Tax Act, on 17.01.2023, the petitioner is still required to pre-deposit 20% of the aforesaid amount of Rs.5,47,81,210/- in

terms of the guidelines circulars of the board. Hence, prayed for suitable direction to the petitioner to deposit the 20% of the amount that stands now modified by the rectification order.

8. I have considered the arguments advanced by the learned counsel for the petitioner and the respondents. There is no dispute that the petitioner has filed the appeal against the Assessment Order dated 19.03.2022. The petitioner was asked to respond by giving a written submissions on or before 19.07.2023 which was also complied by the petitioner. The petitioner also requested for personal hearing. It is noted that the petitioner has got interim protection from this Court by an order dated 28.12.2022.

9. Considering the above, there shall be a direction to the respondents to maintain status quo as far as pre-deposit of the amount pursuant to the Assessment Order dated 19.03.2022 or in terms of the rectification order passed on 17.01.2023 for a period of two months from today. The Appellate Commissioner / fourth respondent before whom

appeal of the petitioner in Appeal No. NFAC/2014-15/10118937 is pending shall endevour to dispose of the above appeal, within a period of two months from the date of receipt of copy of this order. The petitioner is directed to cooperate with the Appellate Commissioner namely the fourth respondent. In case, for any reason the appeal is not disposed of by the fourth respondent, the respondents may call upon the petitioner to pay amount in terms of taking note of the decision of the Hon'ble Supreme Court in the case of ***PCIT vs. LG Electronics India (P.) Ltd.,*** reported in ***[2018] 18 SCC 447***, has held that tax authorities are autorised to grant waiver of deposit of amounts lesser than twenty percent of the disputed demand in the facts and circumstances of each case. Relevant portion of the judgment of the Hon'ble Supreme Court in ***PCIT vs. LG Electronics India (P.) Ltd.,*** reported in ***[2018] 18 SCC 447***, is reproduced herein below:-

> *"Having heard Shri Vikramjit Banerjee, learned ASG appearing on behalf of the appellant and giving credence to the fact that he has argued before us that the administrative Circular will not operate as a fetter on the Commissioner since it is a quasi-judicial authority, we only need to clarify that in all cases like the present, it will be open to the authorities, on the facts of individual case, to grant deposit orders of a lesser amount that 20% pending appeal."*

10. This Writ Petition is disposed of with the above observations. Consequently, connected miscellaneous petitions are closed. There shall be no order as to costs.

25.07.2023

Index:Yes/No
Neutral Citation:Yes/No

AT

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C.SARAVANAN,J.

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