BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 16.10.2023

CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

W.P.(MD)No.24504 of 2023
and W.M.P.(MD)Nos.20684 and 20687 of 2023

Arulmigu Thirucoutrallanathaswamy Temple
Represented by Assistant Commissioner/
Executive Officer,
Coutrallam,
Tenkasi District. ... Petitioner

versus

1. The Income Tax Officer,
   (Exemptions Ward)
   Income Tax Buildings,
   Tirunelveli – 627 011.

2. The Commissioner of Income Tax,
   National Faceless Appeal Centre (NFAC),
   Chennai. ... Respondents

Writ Petition filed under Article 226 of the Constitution of India, seeking for the issuance of Writ of Certiorarified Mandamus, to call for the records under DIN & Letter No.ITBA/COM/F/17/2023-24/1055103014(1) on the file of 1st respondent dated 14.08.2023, mandating the petitioner to pay 20% of the disputed demand of income tax in respect of assessment year 2018-19 in respect to the PAN Number AAEAA74788 and to quash the same as illegal, void, incompetent and direct the 2nd respondent to dispose of the appeal filed by the petitioner in June 2023 under Section 246A of Income Tax Act 1961 challenging the order passed by the 1st respondent under Section 144 of the Act by forbearing the 1st respondent from insisting the petitioner to remit 20% of the disputed demand of income tax in respect of assessment year 2018-2019.

For Petitioner : Mr.S.Manohar
For Respondents : Mr.J.Parekh Kumar
Standing Counsel

ORDER

The petitioner is a Religious Institution governed by the Hindu Religious and Charitable Endowments Department under Act 22/1959. The first respondent, by his proceedings dated 14.08.2023, has made a demand under Section 144 of the Income Tax Act that the petitioner Temple is liable to pay a sum of Rs.8,33,17,810/- as income tax for the assessment year 2018-2019.

2. The learned counsel for the petitioner submits that the Temple is having revenue around Rs.1 crore per year, whereas, the demand has been made a sum of Rs.8,33,17,810/- as income tax, liable to be paid

by the Temple for the assessment year 2018-2019. Therefore, the petitioner Temple has preferred a statutory appeal before the second respondent with a delay of 78 days as per Section 246A of Income Tax Act 1961. The first respondent, by the order impugned in this writ petition, has directed the petitioner to pay 20% of the disputed demand and then only, appeal would be taken up for hearing. As against the same, the petitioner Temple has filed this writ petition. In support of his contention, the learned counsel appearing for the petitioner Temple has also relied on the Judgment of the Hon'ble Supreme Court in ***M/s.Icomm Tale Ltd. vs. Punjab State Water Supply and Sewerage Board and another*** reported in ***AIR 2019 Supreme Court 2682*** and the order of this Court passed in W.P.(MD)No.3430 of 2020 dated 20.02.2020.

3. This Court considered the submission of the learned counsel appearing for the petitioner and perused the materials available on record.

4. In ***M/s.Icomm Tale Ltd. vs. Punjab State Water Supply and Sewerage Board and another*** reported in ***AIR 2019 Supreme Court 2682***, which has been relied on by the learned counsel for the petitioner, the Hon'ble Supreme Court has quashed a similar provision under Section 7 of the Arbitration and Conciliation Act. The relevant portion is extracted as hereunder:

> 27. Deterring a party to an arbitration from invoking this alternative dispute resolution process by a pre-deposit of 10% would discourage arbitration, contrary to the object of de-clogging the Court system, and would render the arbitral process ineffective and expensive.
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> 28. For all these reasons, we strike down clause 25(viii) of the notice inviting tender. This clause being severable from the rest of clause 25 will not affect the remaining parts of clause 25. The judgment of the High Court is set aside and the appeal allowed.

5. In the case of ***Arulmighu Koodal Alagar Perumal Temple, Madurai vs. The Income Tax Officer, Madurai and another (W.P.***

(MD)No.3430 of 2020 dated 20.02.2020), which has been relied on by the learned counsel for the petitioner, this Court, by considering the fact that the petitioner is a Temple governed by an Act, has granted exemption to the temple for filing the appeal without insisting for 20% amount. The relevant portion is extracted as under:

> 3. The writ petition is directed against the order DIN and Letter No.ITBA/COM/F/172019-2020/1024822732(1) dated 06-02-2020 passed by the first respondent herein. When the assessment order was passed against the petitioner dated 26.12.2019, demanding a sum of Rs.3,47,14,400/- (Rupees Three Crores Forty Seven Lakhs Fourteen Thousand and Four hundred only) against which an appeal has been filed on 22.01.2020 before the Commissioner of Income Tax (Appeals), wherein a petition was also filed under Section 246A of the Income Tax Act of 1961 before the second respondent. The second respondent had also passed the impugned order, dated 06.02.2020 directing the petitioner to pay 20% of the demand, on payment of which the demand for the balance 80% would be stayed. Aggrieved by the said

order, the writ petition has been filed.

4. According to the petitioner, demand notice itself is not maintainable.

5. Upon instructions, the learned standing counsel appearing for Revenue, stated that it was an usual order, directing 20% of the amount demanded to be paid. However, considering the fact that the petitioner is a Temple and the demand amount is huge, without going into the merits of the case, the second respondent is directed to dispose of the appeal within a period of eight weeks from the date of receipt of a copy of this order. Till which time, the demand notice should be kept in abeyance."

6. In this case also, the first respondent has made a demand of Rs.8,33,17,810/-. The petitioner Temple also claims that the Temple is not having any revenue more than Rs.1 Crore and without conducting any proper assessment, such demand was made.

7. Considering the fact that the petitioner is having a good case in the appeal and also taking into consideration that the demand amount is

huge and this Court in W.P.(MD)No.3430 of 2020, dated 20.02.2020, has also granted a similar relief to another Temple, this Court is inclined to dispose of the writ petition on similar terms.

8. Accordingly, this writ petition is disposed of with a direction to the second respondent to dispose of the petitioner's appeal as expeditiously as possible. Till the disposal of the appeal, the demand notice should be kept in abeyance. No costs. Consequently, connected miscellaneous petitions are closed.

16.10.2023

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NCC : Yes / No.
Index : Yes / No.
Internet : Yes / No.

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B.PUGALENDHI, J.

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