IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 15.02.2024

CORAM

THE HON'BLE Mr. JUSTICE R. MAHADEVAN
AND
THE HON'BLE Mr. JUSTICE MOHAMMED SHAFFIQ

W.A.No.402 of 2024

Mariasanjeevee Anthoniswamy .. Appellant

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

Writ Appeal filed under Clause 15 of the Letters Patent against the order dated 11.09.2023 passed by the learned Judge in W.P.No.25825 of 2023.

For Appellant : Mr.M.Velmurugan

For Respondent : Mr.A.P.Srinivas
Standing Counsel

J U D G M E N T

(Judgment of the court was delivered by R. MAHADEVAN, J.)

Assailing the order dated 11.09.2023 passed by the learned Judge in W.P.No.25825 of 2023, the appellant / assessee has preferred this writ appeal.

2.According to the appellant, his request for early hearing of appeal pending before the appellate authority / 2nd respondent against the assessment order dated 21.03.2022 passed by the assessing officer, was rejected by communication dated 25.07.2023, on the ground that the large number of high pitched appeals are pending and hence, the case of the appellant cannot be taken out of turn. Questioning this rejection, the appellant filed W.P.No.25825 of 2023. The learned Judge, by order dated 11.09.2023, rejected the claim of the appellant, but granted liberty to him, to file appropriate application to stay the recovery proceedings, within a period of four weeks. The learned Judge has also directed the respondent to keep all recovery proceedings in abeyance, till the disposal of the stay application. Aggrieved by the order so passed by the learned Judge, the appellant / assessee is before this court with the present appeal.

3.The learned counsel for the appellant submitted that the case of the appellant is a fit case under the circular in F.No.279/Misc/M-102/2021-ITJ dated 29.12.2021. Though the learned Judge accepted the same, had erroneously concluded that there are various high pitched appeals pending before the Appellate Commissioner and hence, it would not be possible to him to take up the appellant's case in priority / out of turn, by the order impugned herein. It is further submitted by the learned counsel that the learned Judge failed to take note of the fact that the assessment order was made in excess of jurisdiction by the respondent authorities which has caused genuine hardship to the appellant, since the said order has created an erroneous tax liability on the assessee. Stating so, the learned counsel sought to quash the orders impugned in this appeal as well as in the writ petition. It is also submitted that as directed by the learned Judge, the appellant has preferred an application for staying the recovery proceedings before the appellate authority and the same is pending.

4.On the above submissions, we have heard the learned standing counsel appearing for the respondents and also perused the documents enclosed in the typed set of papers.

5.It is evident that the appellant / assessee is liable to pay the huge liability of Rs.3,20,13,401/- for the assessment year 2013-14; and that, the case of the appellant is very well covered by the Circular dated 29.12.2021 issued by the DCIT (OSD)(ITJ)-1, Central Board of Direct Taxes, Ministry of Finance, Government of India, which stipulates guidelines for taking up the cases on priority / out of turn basis. According to the learned counsel for the petitioner, the application filed for staying the recovery proceedings, is pending before the appellate authority. As such, this court is of the opinion that the appeal filed by the appellant can be taken up for early disposal by the appellate authority, which has been fairly accepted by the learned counsel appearing for the respondents. Therefore, this court, without going into the merits of the case, directs the appellate authority to take up the stay application filed by the appellant and dispose of the same, on merits and in accordance with law, after affording reasonable opportunity to both sides, within a period of two weeks from the date of receipt of a copy of this judgment. Thereafter, the appellate authority shall take up the main appeal and dispose of the same, on merits and in accordance with law, within a period of twelve weeks therefrom.

6.Accordingly, the order of the learned Judge is modified and this writ appeal is disposed of. No costs.

[R.M.D,J.] [M.S.Q, J.]
15.02.2024

Internet : Yes
Neutral Citation : Yes/No
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