IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 07.08.2024
Coram
The Honourable **Mr.Justice Krishnan Ramasamy**

W.P.No.22716 of 2024
and
W.M.P.Nos.24740 & 24742 of 2024

Mr.Hussain Maideen Ebrahim Sha ...Petitioner

Vs.

1. The Assistant Commissioner of Income Tax,
   Non-Corporate Circle 7 (1), Chennai,
   Room No.608, Wanaparthy Block, VI Floor,
   No.121, Mahatma Gandhi Road,
   Nungambakkam, Chennai - 600 034.

2. Commissioner of Income Tax (Appeals)
   National Faceless Appeal Centre, Delhi. ...Respondents

Prayer

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 from the file of the first respondent PAN:AAFP19651L and to quash the impugned order in ITBA/COM/F/17/2024-25/1066423253(1) dated 04.07.2024 for the AY 2018-19 passed by the first respondent as illegal and consequently, to direct the first respondent to grant stay of recovery of demand for AY 2018-19 pending disposal of the appeal preferred by the petitioner before the second respondent.

For Petitioners : Mr.R.Sivaraman
For Respondents : Mr.B.Ramana Kumar,
Senior Standing Counsel

assisted by
Mr.D.Prabhu Mukunth Arun Kumar
Junior Standing Counsel

Order

Heard Mr.R.Sivaraman, learned counsel appearing for the petitioner and Mr.B.Ramana Kumar, learned Senior Standing Counsel, who takes notice on behalf of the respondents. With consent, the main Writ Petition is taken up for final disposal at the stage of admission itself.

2. The challenge in this Writ Petition is to the order passed by the first respondent dated 04.07.2024 and to quash the same, consequently, to direct the first respondent to stay the recovery proceedings pending disposal of the Appeal filed by the petitioner before the second respondent.

3. The facts, which led to the filing of this Writ Petition are as follows:-

i) The petitioner is an individual assessee on the files of the respondent-Department. The petitioner had filed return of income for the AY 2018-19 on 31.03.2019, that the petitioner's case was selected for scrutiny and an assessment order was passed by the first respondent-Assistant Commissioner of Income Tax vide order dated 08.04.2021, assessing the petitioner's income at Rs.12,84,74,810/- and unexplained investment to the tune of Rs.11,77,00,000/-. Against the said assessment, the petitioner preferred an Appeal before the Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, second respondent, and pending the Appeal, the petitioner filed a Petition for Stay before the first respondent. In the meantime, the petitioner, due to oversight, has failed to respond to the email proceedings of the second respondent, the second respondent passed an ex parte order on 06.03.2024. Challenging the said ex parte order, the petitioner preferred Appeal before the Income Tax Appellate Tribunal (ITAT) and the ITAT vide judgment dated 31.05.2024 has remanded the matter back to the file of the second respondent.

ii) Thereafter, the petitioner sent a letter dated 18.06.2024 to the first respondent along with the copy of the order passed by the ITAT and requested for stay of the demand and to lift the bank attachments and subsequently, filed a Petition for Stay, however, the first respondent, rejected the stay petition vide the impugned order dated 04.07.2024, and directed the petitioner to pay the purported mandatory 20% of the disputed demand as per the Office Memorandum issued by the Central Board of Direct Taxes (CBDT) dated 31.07.2017. Challenging the said order dated 04.07.2024, the petitioner has filed the present Writ Petition.

4. Mr.R.Sivaraman, learned counsel for the petitioner would submit that pursuant to the judgment passed by the ITAT, whereby, the Appeal preferred by the petitioner against the order of assessment passed by the first respondent was remitted back to the second respondent for further consideration, the petitioner sent a letter to the first respondent requesting for stay of the demand raised against the petitioner and to lift the bank attachments, however, the first respondent, without even considering the financial stringencies faced by the petitioner, directed the petitioner to pay a sum of Rs.35,00,000/- in 18 equal installments, to which proposal, the petitioner was not agreeable and passed the present impugned order, directing the petitioner to pay 20% of the disputed demand as per CBDT'S circular dated 31.07.2017. Therefore, the learned counsel contended that the impugned order is liable to be quashed as the first respondent has mechanically passed a non-speaking order without even considering any of the submissions and judgment placed on record by the petitioner during the course of hearing. Further, the learned counsel contended that the impugned order is not sustainable even on the ground of violation of principles of natural justice, as the petitioner has not been heard before passing the impugned order.

5. Mr.B.Ramana Kumar, learned Senior Standing Counsel for respondents would submit that though by virtue of second appeal preferred before ITAT, the matter was remitted back to the second respondent for further consideration, as per CBDT's OM, the petitioner-assessee is supposed to pay at least 20% of the demand raised, hence, the petitioner was asked to pay 20% of the disputed demand in 18 equal monthly installments, since the petitioner refused to agree to this offer, the first respondent is constrained to reject the petitioner's request for stay of the demand and lift the bank attachments, and subsequently, rejected the Stay Petition filed by the petitioner and the same cannot be found fault with. Further, the learned Senior Standing Counsel would contend that before passing the impugned order of rejection of the Stay Petition, the petitioner has been heard on two occasions, i.e.. on 24.06.2024 and 03.07.2024, therefore, it is not open to the petitioner to contend that no opportunity was granted before passing the impugned order. Thus, by averring so, the learned Senior Standing Counsel prayed for dismissal of the Writ Petition.

6. In reply, the learned counsel for the petitioner would submit that by virtue of the judgment passed by ITAT, the Appeal filed by the petitioner was remitted back to the second respondent for further consideration and hence, prayed that a direction may be issued on the second respondent for earlier disposal of the Appeal and till the Appeal is heard and disposed of, all proceedings pursuant to the impugned order may be stayed.

7. I have given due considerations to the submissions made on either side and perused the materials available on record.

8. Admittedly, challenging the assessment order passed by the first respondent, the petitioner filed Appeal before the second respondent; that though the second respondent dismissed the Appeal, the said order of the second respondent is only an ex parte order, against which, the petitioner has filed further Appeal before ITAT, where, the petitioner undertaken to prosecute the case before the second respondent, based on which, the petitioner's second Appeal was allowed by ITAT, the first Appeal has been remitted back to the second respondent again for further consideration. Therefore, this Court is of the view that the recovery proceedings, which were initiated against the petitioner, which culminated in the impugned order, is only an aftermath of the dismissal of the Appeal by the second respondent, earlier, which order, was in fact, an ex parte order set aside by ITAT.

9. Thus, taking into consideration of the above narrated facts and circumstances of the case, this Court, in the interest of justice, is inclined to pass the following order:-

i) The second respondent is directed to dispose of the Appeal filed by the petitioner within six weeks from the date of receipt of a certified order copy by the second respondent.

ii) Till the disposal of the Appeal by the second respondent, all further proceedings pursuant to the impugned order passed by the first respondent shall remain stayed.

10. In the result, the Writ Petition is allowed. No costs. Consequently, connected Miscellaneous Petitions are closed.

07.08.2024

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Index : yes/no
Neutral Citation : yes/no

To

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Krishnan Ramasamy,J.,

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