IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.09.2024

CORAM :

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.No.26950 of 2021
and
W.M.P.Nos.28383, 28385 and 28387 of 2021

Rajasekaran ... Petitioner

Vs.

1.The Chief Commissioner of Income Tax (OSD),
Coimbatore,
Office of the Principal Commissioner of Income Tax,
PCIT, Coimbatore – 1.

2.Income Tax Department,
National e-Assessment Centre,
Delhi. ... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorarified Mandamus, to call for the entire records of the first respondent contained in its proceedings dated 29.11.2021 bearing DIN & Letter No.ITBA/COM/F/17/2021-2022/1037340188(1) for the Assessment Year 2018-2019 for PAN : AEEPR3817E and to quash the same as illegal, arbitrary and unjust and to consequently direct the respondents and/or any of their subordinates, agents, representatives or any other person claiming under/through the respondents from taking any further steps towards the recovery of the demand issued pursuant to the Assessment Order dated 16.02.2021 bearing DIN and Letter No.ITBA/AST/S/143(3)/2020-2021/10306977799(1) Assessment Year 2018-2019 for PAN : AEEPR3817E issued by the second respondent pending disposal of the petitioner's appeal by the Commissioner of Income Tax (Appeals).

For Petitioner : Mr.Suhrith Parthasarathy

For Respondents : No appearance

ORDER

This Writ Petition is of the year 2021.

2. There is no representation on behalf of the respondents.

3. In this writ petition, the petitioner has challenged the Impugned Order dated 29.11.2021 passed by the first respondent whereby the stay petition filed by the petitioner under Section 220(6) of the Income Tax Act, 1961 has been rejected. The Impugned Order reads as under:-

> *"The aforesaid assessee has filed a petition dated 18.03.2021 requesting to grant stay of demand which is raised by NeFAC vide order dated 16.02.2021 for the A.Y.2018-19.*
>
> *2. The assessee's stay petition, facts of the case has been carefully perused. Considering the facts of the case and view of instruction No.1914 issued by the Central Board of Direct Taxes*

(CBDT) dated 31/07/2017, the assessee is directed to remit 20% of the demand raised within 7 days of receipt of this order. The Assessing officer shall monitor the payment of 20% of the disputed demand and thereafter, stay the balance 80% of the disputed demand till disposal of appeal by the Commissioner of Income Tax (Appeals), Coimbatore. If the facility is not availed within due date stay will get vacated without any further notice and AO can proceed for recovery.

3. The petition of the Assessee stands disposed accordingly."

4. The facts on record reveal that the petitioner had suffered an adverse Assessment Order on 16.02.2021 passed under Section 143(3) read with Section 143(3A) and 143(3B) of the Income Tax Act, 1961.

5. By the aforesaid order, the petitioner had been made liable to pay tax for a sum of Rs.4,67,83,492/- as against the income tax returns filed by the petitioner in the returns for a sum of Rs.8,54,720/-. It is noticed that the petitioner has filed an appeal under Section 146A of the Income Tax Act, 1961 on 18.03.2021 against the Assessment Order dated 16.02.2021, followed by the stay petition filed by the petitioner under Section 220(6) of the Income Tax Act, 1961.

6. The law on this aspect has been settled by this Court in its decision rendered in **Kannammal** Vs. **Income Tax Officer**, (2019) 413 ITR 390/2019 SCC OnLine Mad 19829 wherein, this Court has held as under:-

> ***"12. The Circulars and Instructions as extracted above are in the nature of guidelines issued to assist the assessing authorities in the matter of grant of stay and cannot substitute or override the basic tenets to be followed in the consideration and disposal of stay petitions. The existence of a prima facie case for which some illustrations have been provided in the Circulars themselves, the financial stringency faced by an assessee and the balance of convenience in the matter constitute the 'trinity', so to say, and are indispensable in consideration of a stay petition by the authority. The Board has, while stating generally that the assessee shall be called upon to remit 20% of the disputed demand, granted ample discretion to the authority to either increase or decrease the quantum demanded based on the three vital factors to be taken into consideration.***
>
> ***13. In the present case, the assessing officer has merely rejected the petition by way of a non-speaking order reading as follows:***
>
>> ***"Kindly refer to the above. This is to inform you that mere filing of appeal against the said order is not a ground for stay of the demand. Hence your request for stay of demand is rejected and you are requested to pay the demand immediately. Notice u/s.221(1) of the Income Tax Act, 1961 is enclosed herewith."***
>
> ***14. The disposal of the request for stay by the petitioner leaves much to be desired. I am of the categoric view that the***

Assessing Officer ought to have taken note of the conditions precedent for the grant of stay as well as the Circulars issued by the CBDT and passed a speaking order. Of course the petition seeking stay filed by the petitioner is itself cryptic. However, as noted by the Supreme Court in the case of Commissioner of Income tax vs Mahindra Mills, ((2008) 296 ITR 85 (Mad)) in the context of grant of depreciation, the Circular of the Central Board of Revenue (No. 14 (SL-35) of 1955 dated April 11, 1955) requires the officers of the department "to assist a taxpayer in every reasonable way, particularly in the matter of claiming and securing reliefs. .... Although, therefore, the responsibility for claiming refunds and reliefs rests with the assessees on whom it is imposed by law, officers should draw their attention to any refunds or reliefs to which they appear to be clearly entitled but which they have omitted to claim for some reason or other......". Thus, notwithstanding that the assessee may not have specifically invoked the three parameters for the grant of stay, it is incumbent upon the assessing officer to examine the existence of a prima facie case as well as call upon the assessee to demonstrate financial stringency, if any and arrive at the balance of convenience in the matter.

15. I thus set aside impugned order dated 25.01.2019. The Assessing Officer is directed to pass orders de novo on the stay application filed by the petitioner in the light of the discussion as aforesaid, after hearing the petitioner, within a period of four weeks from date of receipt of a copy of this Order. I have, for the aforesaid reason, consciously and deliberately refrained from referring to or making any observation on the merits of the assessment.

16. With these directions, the writ petition stands disposed of and consequently, the connected miscellaneous petition is closed. There shall be no order as to costs."

7. The issue on this aspect is also covered by a decision of the Hon'ble Supreme Court in **LG Electronics India Private Limited** Vs. **Principal Commissioner of Income Tax, Delhi-5** in Special Leave to Appeal (Civil) No.18681 of 2018 dated 10.12.2021, (2022) 443 ITR 45/2021 SCC OnLine SC 3211.

8. The Impugned Order is bereft of details and is clearly a non-speaking order.

9. Under these circumstances, the Impugned Order is set aside and the case is remitted back to the respondents to pass a fresh order. Meanwhile, it is open for the petitioner to take steps to expedite the disposal of the appeal as the appeal is of the year 2021, filed on 18.03.2021 for the Assessment Year 2018-2019.

10. The respondents are directed to keep all the recovery proceedings in abeyance pending fresh disposal of the petition of the petitioner filed under Section 220(6) of the Income Tax Act, 1961.

11. It is expected that the first respondent to pass a fresh order as expeditiously as possible preferably within a period of three months from the date of receipt of this order.

12. This Writ Petition is disposed of with the above observations and directions. No costs. Connected Writ Miscellaneous Petitions are closed.

25.09.2024

Index : Yes/No
Internet : Yes/No
Speaking Order/Non-Speaking Order
Neutral Citation : Yes/No

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To

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C.SARAVANAN, J.

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