IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 23.09.2024

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The Honourable **Mr.Justice Krishnan Ramasamy**

W.P.No.28005 of 2024
and
W.M.P.Nos.30560 & 30561 of 2024

S.Balasubramanian ...Petitioner

Vs.

1. The Principal Commissioner of Income Tax,
   Coimbatore -I,
   Office of the Principal Commissioner of Income Tax,
   REAC, Coimbatore – 641 018.

2. The Additional /Joint/Deputy
   Assistant Commissioner of Income Tax,
   National Faceless Appeal Centre (NFAC)
   2nd Floor, E-Ramp,
   Jawaharlal Nehru Stadium
   New Delhi – 110 003.

3. The Income Tax Officer,
   Corporate Ward (2)
   63, Race Course Road,
   Coimbatore – 641 018. ...Respondents

Prayer :-

Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari to call for records relating to the order dated 21.08.2024 passed by the first respondent bearing DIN & Letter No.ITBA/COM/F/17/2024-25/1067799047(1) in respect of AY 2016-17 and to quash the same as arbitrary.

For Petitioner	:	Ms.AL.Gandhimathi Senior Counsel for Mr.I.Palanimuthu
For Respondents	:	Dr.B.Ramaswamy Senior Standing Counsel

Order

With consent, the main Writ Petition is taken up for final disposal at the stage of admission itself.

2. In this Writ Petition, the petitioner has challenged the order passed by the Principal Commercial of Income Tax-I, the first respondent in a Petition for Stay, in C.No.117(24) stay petition/PCIT-1/24-25, dated 21.08.2024, whereby, the petitioner/assessee was directed to pay 20% of the total disputed tax for the assessment year 2016-17.

3. Ms.AL.Gandhimathi, the learned Senior Counsel for the petitioner would submit that in the present case, proceedings are initiated solely based on the statement made by the Managing Director of the Jos Alukas, however, according to the petitioner, the such statement is contrary to what they have recorded in the books of accounts, and therefore, setting out such facts, a detailed reply was filed by the petitioner along with relevant supportive documents, however, the said aspect was not properly appreciated by the Assessment Officer/third respondent and an assessment order came to be passed against the petitioner, aggrieved against which, the petitioner has preferred an Appeal and the same is pending; that during the pendency of the Appeal, the petitioner has filed a Stay Petition before the first respondent. The learned Senior Counsel would submit that the petitioner has a fair chance of succeeding in the Appeal, resulting in entire tax liability becoming untenable. Therefore, she prayed to set aside the condition imposed on the petitioner or in the alternative, requested for reduction of the deposit amount.

4. Dr.B.Ramaswamy, learned Senior Standing Counsel for the respondents would submit that since the petitioner received cash payment of

Rs.5,60,00,000/- being his share of the sale proceeds from an immovable property, the petitioner's case was reopened and assessment order was passed and a demand of Rs.3,67,72,865/- was raised, and though the petitioner filed Appeal against the said order, and as per the circular issued by CBDT dated 31.07.2017, the first respondent/Appellate Authority imposed the condition of pre-depositing 20% of the tax and same is only reasonable and not onerous as contended by the petitioner, inasmuch as, the petitioner has been directed to pay 20% in eight instalments. Therefore, the learned Senior Standing Counsel requested this Court not to modify the said condition and in the event, the Court is inclined to modify the condition, the same may be reduced to not less than 15%.

5. Heard the learned Senior Counsel for the petitioner and the learned Senior Standing Counsel for respondents and perused the materials available on record.

6. On perusal of records, it is seen that the third respondent, Income Tax Officer passed an assessment order dated 23.05.2023, under the provisions of Income Tax Act, 1961, whereby, a tax liability of Rs.3,67,72,865/- was determined for the assessment year 2016-17. Aggrieved by the assessment order passed by the third respondent/Income Tax Officer, the petitioner filed an Appeal before the first respondent/Appellate Authority and during the pendency of the Appeal, the petitioner also filed a Petition for Stay and the first respondent/Appellate Authority by the impugned order, dated 21.08.2024, directed the petitioner to pre-deposit 20% of the tax demanded, which works to Rs.73,54,573/- and granted stay for the balance 80% of the demand.

6.1 Thus, the grievance of the petitioner is only with regard to conditional stay order passed by the Appellate Authority, whereby, the petitioner is required to pre-deposit 20% of the tax, as the petitioner finds the said condition as onerous.

6.2 After hearing the learned counsels appearing for the parties and after noting the factual details of the case, this Court is of the view that the impugned order passed by the first respondent/Appellate Authority requiring the petitioner to pay 20% of the tax demand is on the higher side. Therefore, this Court directs the petitioner to deposit Rs.10% instead of 20% (which come around Rs.36,77,286/-) of the impugned demand ordered by the Appellate Authority within a period of four weeks from the date of receipt of a certified copy of this order. Upon such payment made by the petitioner, there shall an interim stay of all further proceedings pertaining to recovery alone.

6.3 It is needless to state that the Appellate Authority/Commissioner of Income Tax (Appeals) is directed to entertain the appeal and dispose of the same without being influenced by any of the observations made by this Court in this Writ Petition.

7. In the result, the Writ Petition is disposed of on the aforesaid terms. No costs. Consequently, connected Miscellaneous Petitions are closed.

23.09.2024

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Index : yes/no
Neutral Citation : yes/no

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Krishnan Ramasamy,J.,

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