IN THE HIGHCOURT OF JUDICATURE AT MADRAS

DATED : 02.12.2024

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THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P.Nos.36712 and 36714 of 2024
and
W.M.P.Nos.39617, 39620, 39622 and 39623 of 2024

Muthulakshmi Vellaisamy Gnanaguru .. Petitioner in W.P.No36712 of 2024

Gnanaguru Lavanya .. Petitioner in W.P.No36714 of 2024

Vs.

1. The Assistant Commissioner of Income Tax,
   Central Circle 2(4), Chennai,
   1st Floor, Investigation Building,
   No.46, (Old No.108), Mahatma Gandhi Road,
   Nungambakkam, Chennai 600 034.

2. The Commissioner of Income Tax (Appeals),
   CIT(A), Chennai 19,
   No.46, Mahatma Gandhi Road,
   Nungambakkam, Chennai 600 034. ... Respondents in all Writ Petitions

PRAYER in W.P.No.36712 of 2024 : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, to call for the records on the file of the 1st respondent in PAN:

AFBPG3703L and quash the impugned order in ITBA/COM/F/17/2024-25/1070476848(1) dated 20.11.2024 passed by the 1st respondent as illegal, arbitrary against the principles of natural justice and devoid of merit and consequentially direct the 1st respondent to grant stay of recovery of demand for the Assessment Year 2020-21 pending disposal of the appeal preferred by the petitioner before the 2nd respondent.

PRAYER in W.P.No.36714 of 2024 : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, to call for the records on the file of the 1st respondent in PAN: ABIPL5558M and quash the impugned order in ITBA/COM/F/17/2024-25/1070476982(1) dated 20.11.2024 passed by the 1st respondent as illegal, arbitrary against the principles of natural justice and devoid of merit and consequentially direct the 1st respondent to grant stay of recovery of demand for the Assessment Year 2020-21 pending disposal of the appeal preferred by the petitioner before the 2nd respondent.

For Petitioners in both W.P.'s	:	Mr.R.Sivaraman
For Respondents in both W.P.'s	:	Mr.A.N.R.Jayaprathap Standing Counsel

COMMON ORDER

The present writ petitions are filed challenging the order of the 1st respondents whereby the petitioners' stay applications were disposed of directing payment of 20% of disputed demand.

2. It is submitted by the learned counsel for the petitioners that the impugned order is contrary to the Instruction No.96 dated 21.08.1969 whereby the CBDT had directed that in case of high pitch demands i.e., where the income determined on assessment was substantially higher than the returned income and particularly, in circumstances where the income determined is twice as much as the income returned, then the demand shall be kept in abeyance during pendency of appeal.

3. It is also submitted by the learned counsel for the petitioners that in the present case the income that has been assessed is a high pitched assessment and therefore would be covered by Instruction 96 dated 21.08.1969. However, the impugned order relies on CBDT Instuction No.1914 vide Office Memorandum dated 29.02.2016 and 31.07.2017 and directed payment of 20% of the disputed demand.

4. To the contrary it is submitted by the learned counsel for the respondents that this is a case of a search proceeding carried out u/s. 132(1) of Income Tax Act,1961, resulting in unearthing of incriminating materials and on the basis of which assessment has been made. In view thereof, the impugned order does not warrant any interference.

5. Taking into account the submission made by both the learned counsel for the petitioners as well as the learned counsel for respondents, this Court is not inclined to interfere with the impugned order made in exercise of its discretion by the respondent. However, taking into account the difficulties that has been expressed by the learned counsel for the petitioners this Court is inclined to modify the impugned order by directing the petitioners to pay 10% of the disputed taxes within a week from the date of receipt of a copy of this order and the remaining 10% shall be paid within a period of 4 weeks thereafter.

6. It is submitted by the learned counsel for the petitioners that bank account has been attached and that is causing undue hardship as they have

difficulty in processing EMI and other payments due to third parties. It is also submitted that lifting of the bank attachment would also be necessary for the petitioners to even comply with the direction of this Court. In view thereof, the respondents are directed to lift / withdraw the bank attachment forthwith.

7. Accordingly, the writ petitions stand disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

02.12.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes
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To

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MOHAMMED SHAFFIQ, J.

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