BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 04.03.2024

CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

W.P(MD)No.4967 of 2024 and
WMP(MD) Nos.4740 & 4741 of 2024

Thiyagarajan Venkatesh ... Petitioner

Vs

1.The Additional Commissioner of Income Tax,
Income Tax Officer,
National Faceless Assessment Centre,
Delhi.

2.The Income Tax Officer,
Ward 1,
Karaikudi,
Sivagangai District.

3.The Commissioner of Income Tax-I,
Madurai. ...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, calling for the records on the file of the 1st respondent in DIN No. ITBA/AST/S/147/2021-22/1041947276(1) dated

29.03.2022, without considering the manual return for the assessment year 2017-18 filed by the petitioner dated 17.07.2017 and quash the same as illegal and consequently directing the respondents to complete the assessment for the assessment year 2017-18 taking into account the manual return of income filed by the petitioner on 17.07.2017.

For Petitioner : Mr.B.Saravanan,
Senior Counsel for
Mr.RM.Arun Swaminathan

For Respondents : Mr.N.Dilip Kumar
Standing Counsel

O R D E R

The petitioner is an income tax assessee and his PAN No.AGSPV2361B. He has paid his income tax returns for the assessment year 2017-2018 manually within the due date and the same was acknowledged by the respondent. However, the respondents have issued a show cause notice under Section 142(1) of the Income Tax Act on 15.11.2021. The petitioner has replied the show cause notice on 09.02.2022. Even then, without considering the manual income tax return filed by the petitioner and the reply given by him on 09.02.2022, the impugned assessment order has been passed by calculating a sum of Rs.1,07,76,454/- as the petitioner's income for the assessment year 2017-2018 and also processed to impose penalty. Challenging the same, the petitioner has filed an appeal before the Commissioner of Income Tax and the same was returned on the ground that the petitioner has failed to pay 20% of the assessed tax amount.

2.The learned senior counsel appearing for the petitioner submits that the petitioner has filed an application before the assessing Officer under Section 220(6) of the Income Tax Act, 1961 for grant of stay for collection of tax till the disposal of the appeal. According to the learned senior counsel, in case, where the outstanding demand is disputed, the assessing Officer shall grant stay on payment of 15% of the disputed demand pending disposal of the appeal, for which, the learned senior counsel has relied on the Official Memorandum, dated 29.02.2016, wherein, the Government of India, Ministry of Finance, Central Board of Direct Taxes, have issued certain guidelines for grant of stay of demand amount.

According to the learned senior counsel, the assessing authority himself can grant stay on the recovery of assessed amount pending the appeal. However, in this case the assessing authority has insisted the petitioner to pay 20% of the assessment amount. Therefore, the petitioner has filed this writ petition challenging the assessment order, dated 29.03.2022.

3.Mr.N.Dilip Kumar, learned Standing Counsel takes notice for the respondents and submits that the office memorandum, dated 29.02.2016 has already been revised and as per the latest revision, stay for recovery of assessed amount can be granted by the assessing officer on payment of 20% of the tax amount by the assessee.

4.This Court considered the rival submissions made and also perused the materials placed on record.

5.The petitioner claims that his taxable income for the year 2017-2018 is only Rs.3,45,000/- and he has submitted his income tax returns manually for the year 2017-2018. According to the petitioner, though his manual filing of returns has been acknowledged by the Department, they have issued the impugned assessment order, determining the total income of the petitioner as Rs.1,07,76,766/-. Challenging the same, the petitioner has preferred an appeal before the Commissioner of Income Tax(Appeal) and the same is pending. The petitioner has moved an application for grant of stay for collection of demanded tax. The grievance of the petitioner is that they have insisted the petitioner to pay 20% of the assessed amount. The learned Standing counsel has raised his objection that as per the latest revision, the Assessing Officer can grant stay only on payment of 20% of the demanded tax.

6.In view of the above and since it is a high-pitched assessment, this writ petition is disposed of with a permission to the petitioner to pay 15% of the outstanding tax amount in six monthly equal installments for grant of stay. The Appellate Authority shall dispose of the appeal preferred by the petitioner as expeditiously as possible. The assessing officer shall not treat this petitioner as assessee in default, if the petitioner has made the payment as directed by this Court. No costs. Consequently, connected Miscellaneous petitions are closed.

04.03.2024

NCC: Yes/No
Index:Yes/No
Internet:Yes
vrn

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B.PUGALENDHI, J.

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Order made in
W.P(MD)No.4967 of 2024 and
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04.03.2024