BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **22.07.2024**

CORAM:

THE HONOURABLE MR.JUSTICE **C.SARAVANAN**

W.P.(MD) No.16312 of 2024

TRD 160 Melur Milk Producer Co-operative
Society Limited,
rep. by its Secretary,
... Petitioner

/vs./

1.The Commissioner of Appeals,
National Faceless Assessment Centre,
Assessment Unit,
Delhi 110 003.

2.The Income Tax Officer,
Income Tax Office,
Ward 1,
Pudukkottai. ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Mandamus, directing the 1st respondent to dispose the Form 35 appeal preferred by the petitioner on 17.08.2023 within the time frame fixed by this Court.

For Petitioner : Mr.Krishnamorthy for
Mr.T.Bashyam

For Respondents : Mr.N.Dilip Kumar
Senior Standing Counsel

ORDER

The petitioner has filed this writ petition for a Mandamus to direct the first respondent to dispose of Form 35 appeal preferred by the petitioner on 17.08.2023.

2.The petitioner has filed an appeal against the assessment order dated 16.03.2023 passed for the assessment year 2018-19 on 17.08.2023. It is the case of the petitioner that without awaiting for disposal of the appeal, the respondents are insisting the petitioner to pay the amount confirmed in the assessment order dated 16.03.2023. Hence, he prays for a direction.

3.On the other hand, the learned Senior Standing Counsel for the respondents would submit that the petitioner has two alternative remedies. One is to file an application under Section 220(6) of the Income Tax Act, before the jurisdictional Assessing Officer and another is to file a stay petition before the

Appellate Commissioner. Without following either of the procedure, the petitioner is asking for early disposal of the appeal.

4.It is submitted that there are several appeals that are pending before the National Faceless Assessment Centre and that the appeal will be numbered and taken up for hearing in due course of time. It is submitted that the petitioner should workout the remedy in the manner known to law.

5.Having considered the submissions made by the learned counsel for the petitioner and the learned Senior Standing Counsel for the respondents, I am of the view that the request of the petitioner for out of turn disposal of the appeal cannot be countenanced, as the procedure is under the new regime under the faceless appeal.

6.Be that as it may, the petitioner can either move a suitable application before the jurisdictional Assessing Officer under Section 220(6) of the Income Tax Act or the stay petition before the Appellate Authority, namely the National Faceless Assessment Centre, before whom the appeal has been filed on

17.08.2023. Since the petitioner fails to move any of these applications, this Writ Petition is otherwise liable to be dismissed.

7.Since the petitioner is directed to move such application either before the Appellate Authority or before the Jurisdictional Authority, the recovery proceedings are directed to be kept in abeyance for a period of 45 days from the date of receipt of a copy of this order.

8.It is open for the petitioner to move suitable application either before the jurisdictional Assessing Officer under Section 220(6) of the Income Tax Act or before the Appellate Authority, namely the National Faceless Assessment Centre. The authority concerned while passing orders may take note of the relevant decision of the Hon'ble Supreme Court.

9.These Writ Petitions stand disposed of, accordingly. No costs.

22.07.2024

Index : Yes / No
Internet : Yes / No
mm

C.SARAVANAN, J.

mm

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