BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **07.11.2024**

CORAM:

THE HONOURABLE MR.JUSTICE **K.KUMARESH BABU**

W.P.(MD) No.25909 of 2024
and
W.M.P.(MD) No.21975 of 2024

Mudalaipatti Kunnudaiyan Muthukrishnan ... Petitioner

/vs./

Income Tax Officer,
Ward 1(1),
Trichy ... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari, calling for the records of the respondent contained in impugned order issued vide DIN and Letter No.ITBA/COM/F/17/2024-25/1066983873(1) dated 24.07.2024 for the assessment year 2016-17 passed by the respondent quash the same as arbitrary unjust and illegal.

For Petitioner : Mr.Mansoor Ilahi

For Respondent : Mr.N.Dilip Kumar
Standing Counsel

ORDER

The writ petition has been filed for the issue of a Writ of Certiorari to call for the records of the impugned order vide letter No.ITBA/COM/F/17/2024-25/1066983873(1) dated 24.07.2024 of the respondent for the assessment year 2016-17 and to quash the same.

2. The learned counsel for the petitioner would vehemently contend that the order impugned is a non speaking order without assigning any reasons. He would submit that an assessment order was passed by the respondent herein on 26.06.2024, against which the petitioner had preferred an appeal.

3. The learned counsel for the petitioner would further submit that the respondent had also invoked the powers of the Assessing Officer under Section 220(6) of the Income Tax Act, 1961 *(herein after referred to as Act)* and that the petitioner had therefore filed an application for grant of absolute stay of the proceedings before the Assessing Officer himself, by relying upon various judgments which would be applicable to the facts of the case, but however without considering any of them, the respondent had rejected the petition by

holding that the petitioner had not paid 20% of the disputed amount as per the instructions given by the Board on 31.07.2017. He would submit that the circular does not stipulate the payment by pre-condition of the 20% of the disputed amount and that the circular only indicates that the condition can be given for grant of stay. He had also relied upon the judgment of this Court in ***W.P.(MD) No. 5550 of 2020 (Queen Agencies Vs. Assistant Commissioner of Income Tax, (Circle-1) and W.P.No.3849 of 2019 (Kannammal Vs. Income Tax Officer)*** and therefore, he prayed this Court to set aside the impugned order.

4. Countering his argument, Mr.N.Dilip Kumar, learned standing counsel for the respondent would contend that Section 220(6) of the Act does not clothe the power to the Assessing Officer to grant stay of the proceedings. He would draw attention of this Court to Section 220(6) of the Act and would contend that the power that had been vested with the Assessing Officer is only not to treat the assessee as being in default in respect of the amount in dispute in the appeal, however on condition he may lay down in its discretion.

5. He would further submit that the power for grant of stay would only be available with the appellate authority and that when an order is passed, the Authority becomes *functus officio* and that the authority who had passed the order cannot itself stay its own order. He would further contend that even for grant of protection of, not to treat the assessee as being in default, the petitioner ought to have given reasons as to why such order is required to be made in his favour. He would further submit that the petitioner has not adduced any such reasons in the said application and therefore, the petitioner is not entitled for any relief whatsoever and seek this Court to dismiss the above writ petition.

6. Heard the learned counsel on either side and perused the records.

7. Admittedly, the petitioner had filed an appeal as against the order of assessment issued by the respondent. He had also taken out an application under Section 220(6) of the Act. The respondent herein had passed the impugned order. Reading of the impugned order refers to a circular, which provides that the Assessing Officer shall grant a stay of demand till the disposal of the first appeal on payment of 20% of the disputed demand. It is to be noted that the power that

had been vested with the assessing officer is only a power to treat the assessee as not being in default in respect of the amount in dispute in the appeal.

8. A learned single Judge of this Court in W.P.(MD) No.5550 of 2020 had categorically held that such order passed under Section 220(6) of the Act would only hold good and will have to give way as and when the appellate authority passes an order on the stay petition filed by the aggrieved assessee. The nomenclature stay used in the circular would only mean the powers that is vested with him. The reason for me for coming to such conclusion is that the power to grant stay is a power that is incidentally available to the appellate authority as held by the Hon'ble Apex Cuort in the judgment reported in (1969) 71 ITR 815 (***ITO Vs M.K.Mohammed Kunhi***)

9. As rightly pointed out by the learned Standing Counsel, even the application filed by the petitioner before the respondent for grant of stay is bald and bereft of any material facts and even if the circular is to be made applicable, then the respondent could have invoke his power under Section 220(6) of the Act by directing the petitioner to deposit the sum equivalent to 20% of the disputed

amount in appeal. Further, the impugned order does not specify any reason as to why the petitioner was not entitled for the relief under Section 220 (6) of the Act. Since I found that the impugned order is a non speaking order, I am inclined to interfere with the same.

10. In fine, the order impugned issued vide letter No.ITBA/COM/F/17/2024-25/1066983873(1) dated 24.07.2024 passed by the respondent is set aside and the matter is remitted back to the respondent by treating the application as one under Section 220(6) of the Act and pass appropriate orders on merits and in accordance with law.

11. The petitioner shall also file a supplementary petition containing the additional particulars and contentions in support of his claim within a period of two weeks from the date of receipt of a copy of this order. On receipt of such application, the respondent shall consider the same and pass appropriate orders within a period of four weeks thereafter.

12. With the aforesaid directions, the Writ Petition stands allowed. However, there shall be no order as to costs. Consequently, connected Miscellaneous Petition is closed.

Index : Yes / No
Internet : Yes / No

07.11.2024

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Note : Issue order copy on 11.11.2024

K.KUMARESH BABU, J.

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