IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.05.2025

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THE HON'BLE Ms. JUSTICE G.R.SWAMINATHAN

W.P. No. 18140 of 2025
and
W.M.P. Nos. 20305 and 20307 of 2025

M/s.VME Infrastructure Private Limited
No.364, Pillayar Koil Street
Panner Nagar, Mogappair West
Chennai-600037, Represented
by its Director Mr.Karthik … Petitioner

-vs-

Income Tax Officer
Corporation Ward 3(3) CHE
Room No.413, Fourth Floor
Chennai Vanaparthy Block
No.121, Mahatma Gandhi Road
Nungambakkam, Chennai-600034. ... Respondent

Prayer:- Writ Petition filed under Article 226 of the Constitution of India, 1950, praying to issue a Writ of Certiorarified Mandamus, calling for the records relating to the impugned order bearing DIN & Letter No. ITBA/COM/F/17/2025-26/1075968380(1) dated 01.05.2025 passed by the respondent, quash the same and direct the respondent to treat the petitioner as not an assessee in default pending disposal of the appeal filed by the petitioner before the Commissioner of Income Tax (Appeals), Chennai- II.

For Petitioner : Mr.T.R.Ramesh

For Respondent : Mr.S.Rajasekar, Standing Counsel

O R D E R

Heard the learned counsel for the petitioner and the learned Standing Counsel for the respondent.

2.The petitioner filed an appeal before the Commissioner of Income Tax (Appeals) questioning the assessment order. As per Section 220 (6) of the Income Tax Act, 1961, he has to go only before the Assessment Officer for the interim relief. When the petitioner moved the Assessment Officer, the Assessment Officer declined to grant the relief insisting that the petitioner should deposit 20% of the tax. He relied on the CBT instructions issued in this regard. Challenging the stand of the Assessment Officer declining to grant the interim relief, the present writ petition came to be filed.

3.The order impugned in this writ petition is governed by an earlier order dated 08.04.2021, made in *W.P.MD.No.5550 of 2020 in M/s.Queen Agencies Vs. The Assistant Commissioner of Income Tax (Circle -1) and another).* Paragraph Nos.12 & 13 of the said order reads as follows:

12.The learned counsel on either side bring it to *my notice that the decision of the Delhi high Court was put to challenge before the Hon'ble Supreme Court in (2018) 18 SCC 447 (Principal Commissioner of Income Tax Vs.LG Electronics India Pricate Limited). Based on the submissions of the learned Additional Solicitor General, the Hon'ble Supreme Court clarified that in all cases arising under 220 (6) of the Act, it will be open to the authorities on the facts of individual cases, to grant deposit orders of a lesser amount than 20% pending appeal. This was laid down by the Hon'ble Supreme Court since it was submitting that the administrative circular will not operate as a fetter on the Commissioner since he is a quasi – judicial authority. Since the Assessing Officer is exercising quasi – judicial power by virtue of Section 220 (6) of the Act, the implication of the clarification of the legal position by the Hon'ble Supreme Court is that the assessing officer can grant deposit orders of a lesser amount than 20% pending appeal without making reference to the administrative Pr.CIT/CIT. Reference of course has to be made if he is of the view that deposit order of a higher amount than 20% pending appeal is warranted.*

13.The order impugned in this writ petition is liable to be set aside as it is absolutely non – speaking. It is true that as pointed out by the learned standing

> *counsel, the stay petition filed by the petitioner is equally bald and bereft of details. But as observed in Kannammal's case, the assessing officer ought to be pro-active. The statutory provision will come into play only if an appeal has been filed before the appellate authority. The case of the assessee would definitely be projected in the appeal memorandum. Therefore, in the light of the stand taken in the appeal memorandum, the Assessing Officer can pass order by applying the trinity principles.*

4.Applying the aforesaid ratio, the order impugned in the present writ petition is set aside and the matter is remitted to the file of the respondent. The respondent will bear in mind the principles laid down in the aforesaid decision and pass appropriate orders after hearing the petitioner.

5.The writ petition stands disposed of accordingly. No costs. Consequently, the connected Miscellaneous Petitions are closed.

16.05.2025

Index: Yes/No
Internet: Yes/No
Speaking /Non-speaking order
Neutral Case Citation: Yes /No
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To

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No.121, Mahatma Gandhi Road
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G.R.SWAMINATHAN, J.

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