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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.06.2025

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THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

W.P.No.33487 of 2024
and
W.M.P.Nos.36254 and 36255 of 2024

John Antony,
No.13-15, KRG Nagar,
4th Street Ganapathy,
Coimbatore - 641 006.
Tamil Nadu, India. ...Petitioner

Vs.

1.Principal Commissioner of Income Tax,
PCIT, Coimbatore - 1,
REAC, Coimbatore, Tamil Nadu,
Chennai - 641 018.

2.The Assistant Commissioner of Income Tax,
Non-Corporate Circle 2, CBE
REAC, Coimbatore, Tamil Nadu,
Chennai - 641 018.

3.Commissioner of Income Tax (Appeals),
National Faceless Appeal Centre,
Delhi. ...Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorarified Mandamus, to call for the records on the file of the first respondent in PAN : AEIPJ6043G and

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quash the impugned order in ITBA/COM/F/17/2024-25/1068611506(1) dated 12.09.2024 for the assessment year 2009-10 as illegal, arbitrary, against the principles of natural justice and devoid of merit and consequentially direct the first respondent to grant stay of recovery of demand for the assessment year 2009-10 pending disposal of the appeal preferred by the petitioner before the third respondent.

For Petitioner : Mr.Raghavrajeev Menon

For Respondents : Dr.B.Ramaswamy
Senior Standing Counsel

ORDER

This Writ Petition has been filed challenging the impugned order dated 12.09.2024 passed by the first respondent and to quash the same.

2. The learned counsel for the petitioner would submit that the demand was made for Rs.35,45,470/-, out of which Rs.11,18,414/- has already been paid by the petitioner. Normally, the demand tax would be 20%, but however, in the present case, the disputed demand tax is 31.5% by citing the reason that the criminal proceedings are pending. Therefore, the first respondent refused to grant the stay, holding that if the stay is granted, the prosecution will be stalled. He would further submit that in the present case, the stay is asked only for the purpose of further recovery pending the appeal before the appellate authority. It has nothing to do with the

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continuation of the criminal proceedings. However, the first respondent rejected the stay application for the assessment year 2009-10. Being aggrieved over the same, the petitioner has filed this writ petition seeking for the aforesaid relief.

3. The learned Senior Standing Counsel for the respondents would submit that in the present case, recovery was made to an extent of 31.5% and there is no dispute on that aspect. However, the first respondent rejected the stay application due to the reason that in the event the stay is granted, that would automatically affect the continuation of the criminal proceedings. The petitioner now clarified that the stay is only for the purpose of further recovery, which is civil in nature. Therefore, granting the stay will in no way affect the continuation of the criminal proceedings. He therefore prays for appropriate orders.

4. As rightly pointed out by both the petitioner as well as the respondents, in the present case there is no dispute on the aspect of the payment of 31.5% of the disputed demand tax while in the stay petition

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before the first respondent to grant stay for further recovery. While considering the stay application, the first respondent rejected the same by citing the reason that if any stay is granted, that would affect the criminal proceedings.

5. It is made clear that merely granting the stay will in no way affect the criminal proceedings, the stay is only for the purpose of giving protection from further tax recovery pending the appeal before the appellate authority. Therefore, this Court is inclined to set aside the impugned order with terms, by issuing the following directions:-

i) The impugned order passed by the respondent dated 12.09.2024 is set aside.

ii) There shall be an order of stay of further recovery until the disposal of the appeal by the appellate authority. Granting the stay in the present case for further recovery will in no way affect the continuation of the criminal proceedings before the criminal court, unless otherwise if any separate order is obtained from the respective criminal courts in accordance with law.

6. With the above directions, this Writ Petition is disposed of. The

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third respondent is directed to dispose of the CIT Appeal as early as possible preferably within a period of eight (8) weeks from the date of receipt of a copy of this order. No costs. Consequently, connected Miscellaneous Petitions are closed.

27.06.2025

Speaking order / Non-Speaking order
Index : Yes / No
Neutral Citation : Yes / No
sri

To

1.The Principal Commissioner of Income Tax,
PCIT, Coimbatore - 1,
REAC, Coimbatore, Tamil Nadu,
Chennai - 641 018.

2.The Assistant Commissioner of Income Tax,
Non-Corporate Circle 2, CBE
REAC, Coimbatore, Tamil Nadu,
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KRISHNAN RAMASAMY, J.,

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