



W.P.No.35150 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 15.09.2025

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Coram:

THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

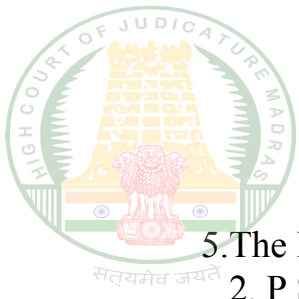
**W.P.No.35150 of 2025
and W.M.P.Nos.39349, 39351, 39354 & 39356 of 2025**

Swelect HHV Solar Photovoltaics Private Limited,
Represented by its Authorized Signatory J.Bhuvaneswari
5, Swelect House,
P S Sivasamy Salai, Mylapore,
Chennai, Tamil Nadu – 600 004.

...Petitioner

Versus

1. Deputy Commissioner of Income Tax,
Corporate Circle 3(1),
Wanaparthi Block, Uthamar Gandhi Salai,
Chennai – 600 034.
2. The Assessing Officer,
Assessment Unit – National
Faceless Assessment Centre,
New Delhi.
3. Commissioner of Income Tax (Appeals),
National Faceless Appeal Centre,
New Delhi.
4. The High Pitched Assessment
Grievance Redressal Committee,
Through the Principal Commissioner
of Income Tax,
Chennai – 600 034.



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5. The Branch Manager – HDFC Bank,
2, P S Sivasamy Salai, Mylapore,
Chennai, Tamil Nadu – 600 004.

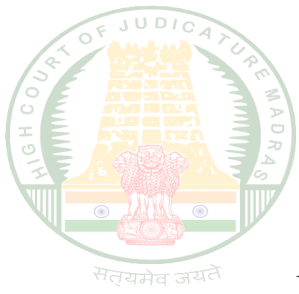
...Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of certiorarified mandamus calling for the records of the 1st respondent contained in its order dated 08.07.2025 bearing ITBA/COM/F/17/2025-26/1078306442(1) for AY 2023-24 and all consequential proceedings arising therefrom including the order of the 1st respondent dated 30.07.2025 bearing ITBA/COM/F/17/2025-26/1079101337(1) AY 2023-24 and the notice of the 1st respondent dated 08.09.2025 bearing ITBA/COM/F/17/2025-26/1080400188(1) and quash the same as arbitrary, illegal and unjust and to consequently, direct the 1st respondent to lift the attachment of the petitioner's Bank Account towards the recovery of the demands raised for AY 2023-24 and to further direct the respondents to refrain from taking any coercive steps towards recovery of demands for AY 2023-24.

For Petitioner : Mr.Suhrith Parthasarathy

For Respondents – 1 to 4 : Ms.S.Premalatha,
Senior Standing Counsel

For Respondent – 5 : Mr.C.Mohan
and
Ms.A.Rexy Josephine Mary
for M/s.King & Partridge



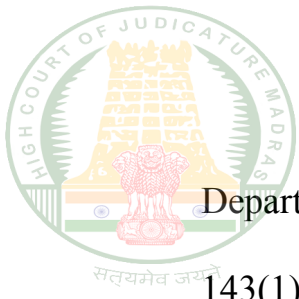
ORDER

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Ms.S.Premalatha, learned Senior Standing Counsel takes notice for the respondents 1 to 4 and Mr.C.Mohan, learned counsel takes notice for 5th respondent.

2. The relief sought in this writ petition is to quash the order dated 08.07.2025 passed by 1st respondent and all consequential proceedings arising therefrom including the order dated 30.07.2025 passed by 1st respondent and Notice dated 08.09.2025 issued by 1st respondent and to direct the 1st respondent to lift the attachment of the petitioner's Bank Account towards recovery of the demands raised for A.Y 2023-24 and to direct the respondents to refrain from taking any coercive steps towards recovery of demands for A.Y 2023-24.

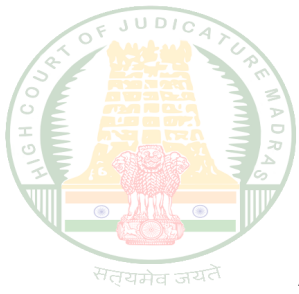
3. The brief facts of the case are that the petitioner is engaged in the business of manufacturing solar modules. On 31.10.2023, the petitioner had filed its Return of Income for the Assessment Year 2023-24, declaring the income as “Nil” and claiming a refund of Rs.4,57,530/- of the taxes paid by admitting a loss of Rs.10,63,10,206/-, pursuant to which, the Income Tax



Department had issued an Intimation Order dated 29.11.2023 under Section 143(1) of the Income Tax Act, 1961 (hereinafter referred to as “IT Act”), granting refund of Rs.4,75,830/-. Thereafter, Income Tax Department issued a Notice dated 19.06.2024 under Section 143(2) of the IT Act, to examine the following issues:

- (i) Investment in tangible assets and claim of depreciation
- (ii) High Creditors/Liabilities
- (iii) Depreciation claim
- (iv) Unsecured Loans
- (v) Imports

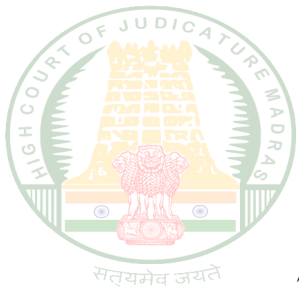
4. In response to the aforesaid Notice dated 19.06.2024, petitioner submitted their Reply which was received by the Department on 26.12.2024. After receipt of petitioner's Reply, Department had issued a Notice dated 03.01.2025 under Section 142(1) of the IT Act to the petitioner, to which petitioner submitted their Reply which was received by the Department on 10.01.2025. Thereafter, 2nd respondent had passed the Assessment Order dated 14.03.2025, raising a high pitched demand to the tune of Rs.1,68,57,23,856/- against the petitioner.



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5. Challenging the aforesaid Assessment Order, the petitioner preferred an Appeal dated 28.04.2025 before 3rd respondent. Petitioner filed a Stay Application dated 07.07.2025 before 1st respondent, seeking to stay the Assessment Order dated 14.03.2025. The 1st respondent has passed an Order dated 08.07.2025, directing the petitioner to pay 20% of the disputed demand i.e., Rs.27,40,98,930/- and to produce Challan evidencing the said payment, on or before 14.07.2025, in order to consider the petitioner's Stay Application.

6. The petitioner submitted a Representation dated 14.07.2025 before 1st respondent, requesting to afford an opportunity to the petitioner's authorized representatives to put forth their submissions and make out their case as to why the demand raised by 2nd respondent ought to be stayed. However, without considering the petitioner's Representation, 1st respondent vide Order dated 30.07.2025, rejected the petitioner's Stay Application and directed the petitioner to pay 20% of the disputed demand, on or before 05.08.2025.



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7. Aggrieved over the Order dated 30.07.2025 passed by 1st respondent, petitioner filed a Grievance Petition dated 01.08.2025 before 4th respondent, seeking to quash the high pitched assessment. In the meanwhile, 1st respondent has issued a Notice dated 08.09.2025 to 5th respondent Bank, seeking to freeze the petitioner's Bank Account for the tax dues amounting to Rs.27,40,98,930/- payable by the petitioner. Hence, the petitioner has filed this writ petition for the relief stated *supra*.

8. The learned counsel for the petitioner submitted that while dealing with an identical issue in the case of ***Kannammal Vs. Income Tax Officer*** reported in ***(2019) 413 ITR 390 (Mad)***, this Court has referred to the periodic Instructions/Circulars issued by the Central Board of Direct Taxes (CBDT) for the guidance of Departmental Authorities. For better appreciation, relevant portion of the said decision is extracted hereunder:

“8. In addition, periodic Instructions/Circulars in regard to the manner of adjudication of stay petitions are issued by the Central Board of Direct Taxes (CBDT) for the guidance of the Departmental authorities. The one oft-quoted by the assessee is Office Memorandum F.No.1/6/69/-ITCC, dated 21.08.1969 that states as follows:

'1. One of the points that came up for consideration in the 8th Meeting of the Informal Consultative Committee was that income-tax assessments were often arbitrarily pitched



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at higher figures and that the collection of disputed demand as a result thereof was also not stayed in spite of the specific provision in the matter in s. 220(6) of the IT Act, 1961.

*2. The then Deputy Prime Minister had observed as under:
".....Where the income determined on assessment was substantially higher than the returned income, say twice the latter amount or more, the collection of the tax in dispute should be held in abeyance till the decision on the appeal provided there were no lapses on the part of the assesseees."*

3. The Board desire that the above observations may be brought to the notice of all the Income-tax Officers working under you and the powers of stay of recovery in such cases up to the stage of first appeal may be exercised by the Inspecting Assistant Commissioner/Commissioner of Income-tax.'

9. Thereafter, Instruction No.1914 was issued by the CBDT on 21.03.1996 and states as follows:

1. Recovery of outstanding tax demands

[Instruction No. 1914 F. No. 404/72/93 ITCC dated 2-12-1993 from CBDT]

The Board has felt the need for a comprehensive instruction on the subject of recovery of tax demand in order to streamline recovery procedures. This instruction is accordingly being issued in supersession of all earlier instructions on the subject and reiterates the existing Circulars on the subject.

2. The Board is of the view that, as a matter of principle, every demand should be recovered as soon as it becomes due. Demand may be kept in abeyance for valid reasons only in accordance with the guidelines given below :

A. Responsibility:

i. It shall be the responsibility of the Assessing Officer and the TRO to collect every demand that has been raised, except the following: (a) Demand which has not fallen due; (b) Demand which has been stayed by a Court or



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ITAT or Settlement Commission;(c) Demand for which a proper proposal for write-off has been submitted;(d) Demand stayed in accordance with paras B & C below.

ii. Where demand in respect of which a recovery certificate has been issued or a statement has been drawn, the primary responsibility for the collection of tax shall rest with the TRO.

iii. It would be the responsibility of the supervisory authorities to ensure that the Assessing Officers and the TROs take all such measures as are necessary to collect the demand. It must be understood that mere issue of a show cause notice with no follow-up is not to be regarded as adequate effort to recover taxes.

B. Stay Petitions:

i. Stay petitions filed with the Assessing Officers must be disposed of within two weeks of the filing of petition by the tax- payer. The assessee must be intimated of the decision without delay.

ii. Where stay petitions are made to the authorities higher than the Assessing Officer (DC/CIT/CC), it is the responsibility of the higher authorities to dispose of the petitions without any delay, and in any event within two weeks of the receipt of the petition. Such a decision should be communicated to the assessee and the Assessing Officer immediately.

iii. The decision in the matter of stay of demand should normally be taken by Assessing Officer/TRO and his immediate superior. A higher superior authority should interfere with the decision of the AO/TRO only in exceptional circumstances; e.g., where the assessment order appears to be unreasonably high-pitched or where genuine hardship is likely to be caused to the assessee. The higher authorities should discourage the assessee from filing review petitions before them as a matter of routine or in a frivolous manner to gain time for withholding payment of taxes.



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C. Guidelines for staying demand:

i. A demand will be stayed only if there are valid reasons for doing so. Mere filing an appeal against the assessment order will not be a sufficient reason to stay the recovery of demand. A few illustrative situations where stay could be granted are:

It is clarified that in these situations also, stay may be granted only in respect of the amount attributable to such disputed points. Further where it is subsequently found that the assessee has not co-operated in the early disposal of appeal or where a subsequent pronouncement by a higher appellate authority or court alters the above situation, the stay order may be reviewed and modified. The above illustrations are, of course, not exhaustive.

ii. In granting stay, the Assessing Officer may impose such conditions as he may think fit. Thus he may — a. require the assessee to offer suitable security to safeguard the interest of revenue; b. require the assessee to pay towards the disputed taxes a reasonable amount in lump sum or in instalments; c. require an undertaking from the assessee that he will co-operate in the early disposal of appeal failing which the stay order will be cancelled. d. reserve the right to review the order passed after expiry of a reasonable period, say up to 6 months, or if the assessee has not co-operated in the early disposal of appeal, or where a subsequent pronouncement by a higher appellate authority or court alters the above situations; e. reserve a right to adjust refunds arising, if any, against the demand.

iii. Payment by instalments may be liberally allowed so as to collect the entire demand within a reasonable period not exceeding 18 months.

iv. Since the phrase “stay of demand” does not occur in section 220(6) of the Income-tax Act, the Assessing Officer should always use in any order passed under section 220(6) [or under section 220(3) or section 220(7)], the expression that occurs in the section viz., that he agrees to treat the assessee as not being default in respect of the amount specified, subject to such conditions as he deems fit to impose.



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v. While considering an application under section 220(6), the Assessing Officer should consider all relevant factors having a bearing on the demand raised and communicate his decision in the form of a speaking order.

D. Miscellaneous:

i. Even where recovery of demand has been stayed, the Assessing Officer will continue to review the situation to ensure that the conditions imposed are fulfilled by the assessee failing which the stay order would need to be withdrawn.

ii. Where the assessee seeks stay of demand from the Tribunal, it should be strongly opposed. If the assessee presses his application, the CIT should direct the departmental representative to request that the appeal be posted within a month so that Tribunal's order on the appeal can be known within two months.

iii. Appeal effects will have to be given within 2 weeks from the receipt of the appellate order. Similarly, rectification application should be decided within 2 weeks of the receipt thereof. Instances where there is undue delay in giving effect to appellate orders, or in deciding rectification applications, should be dealt with very strictly by the CCITs/CITs.

3. The Board desires that appropriate action is taken in the matter of recovery in accordance with the above procedure. The Assessing Officer or the TRO, as the case may be, and his immediate superior officer shall be held responsible for ensuring compliance with these instructions.

4. This procedure would apply mutatis mutandis to demands created under other Direct Taxes enactments also.'

10. Instruction 1914 was partially modified by Office Memorandum dated 29.02.2016 taking into account the fact that Assessing Officers insisted on payment of significant portions of the disputed demand prior to grant of stay resulting in extreme hardship for



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tax payers. Thus, in order to streamline the grant of stay and standardize the procedure, modified guidelines were issued which are as follows:

'.....

(A) In a case where the outstanding demand is disputed before CIT (A), the assessing officer shall grant stay of demand till disposal of first appeal on payment of 15% of the disputed demand, unless the case falls in the category discussed in pars (B) hereunder.

(B) In a situation where,

(a) the assessing officer is of the view that the nature of addition resulting in the disputed demand is such that payment of a lump sum amount higher than 15% is warranted (e.g. in a case where addition on the same issue has been confirmed by appellate authorities in earlier years or the decision of the Supreme Court /or jurisdictional High Court is in favour of Revenue or addition is based on credible evidence collected in a search or survey operation, etc.) or,

(b) the assessing officer is of the view that the nature of addition resulting in the disputed demand is such that payment of a lump sum amount lower than 15% is warranted (e.g. in a case where addition on the same issue has been deleted by appellate authorities in earlier years or the decision of the Supreme Court or jurisdictional High Court is in favour of the assessee, etc.), the assessing officer shall refer the matter to the administrative Pr. CIT/ CIT, who after considering all relevant facts shall decide the quantum/ proportion of demand to be paid by the assessee as lump sum payment for granting a stay of the balance demand.'

11. Instruction 1914 was further modified by Office Memorandum bearing number F.No.404/72/93 – ITCC dated 31.07 2017 as follows:

'OFFICE MEMORANDUM F. No. 404/72/93-ITCC dated 31.07.2017

Subject: Partial modification of Instruction No. 1914 dated 21.3.1996 to provide for guidelines for stay of demand at the first appeal stage. Reference: Board's O.M. of even number dated 29.2.2016



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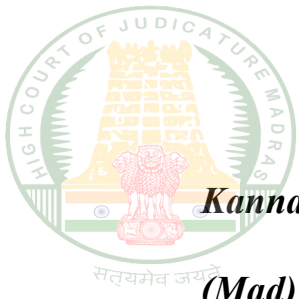
Instruction No. 1914 dated 21.3.1996 contains guidelines issued by the Board regarding procedure to be followed for recovery of outstanding demand, including procedure for grant of stay of demand.

Vide O.M. N0.404/72/93-ITCC dated 29.2.2016 revised guidelines were issued in partial modification of instruction No 1914, wherein, inter alia, vide para 4 (A) it had been laid down that in a case where the outstanding demand is disputed before CIT(A), the Assessing Officer shall grant stay of demand till disposal of first appeal on payment of 15% of the disputed demand unless the case falls in the category discussed in para (B) thereunder. Similar references to the standard rate of 15% have also been made in succeeding paragraphs therein.

2. The matter has been reviewed by the Board in the light of feedback received from field authorities. In view of the Board's efforts to contain over pitched assessments through several measures resulting in fairer and more reasonable assessment orders, the standard rate of 15% of the disputed demand is found to be on the lower side. Accordingly, it has been decided that the standard rate prescribed in O.M.dated 29.2.2016 be revised to 20% of the disputed demand, where the demand is contested before CIT(A). Thus all references to 15% of the disputed demand in the aforesaid O.M dated 29.2.2016 hereby stand modified to 20% of the disputed demand. Other guidelines contained in the O.M. dated 29.2.2016 shall remain unchanged.

These modifications may be immediately brought to the notice of all officers working in your jurisdiction for proper compliance.'"

8.1. It is further submitted by the learned counsel for the petitioner that the impugned orders dated 08.07.2025 and 30.07.2025 passed by 1st respondent are contrary to the decision rendered by this Court in the case of



Kannammal Vs. Income Tax Officer reported in ***(2019) 413 ITR 390***

(Mad). That apart, prior to the passing of impugned orders, the petitioner was not provided with an opportunity of hearing.

9. The learned Senior Standing Counsel appearing for the respondents 1 to 4 submitted that prior to the passing of impugned orders, the petitioner was provided with sufficient opportunities, but, petitioner failed to avail the same and thus, the impugned orders have been passed by 1st respondent.

10. The learned counsel for the petitioner submitted that the petitioner filed the Stay Application on 07.07.2025, immediately, on the very next day i.e., on 08.07.2025, 1st respondent has passed an order directing the petitioner to pay 20% of the disputed demand amounting to Rs.27,40,98,930/-. Though the petitioner vide Representation dated 14.07.2025 requested the 1st respondent to afford a reasonable opportunity to put forth their case, without even considering the petitioner's request, 1st respondent vide Order dated 30.07.2025, rejected the petitioner's Stay Application and directed the petitioner to pay 20% of the disputed demand,



on or before 05.08.2025.

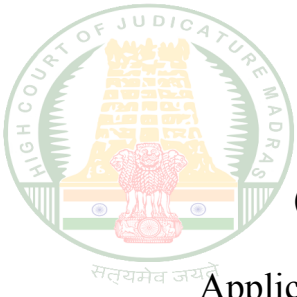
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11. Heard the learned counsel for the petitioner and the learned Senior Standing Counsel for the respondents 1 to 4.

12. From a perusal of the impugned orders, it is seen that 1st respondent has passed the impugned orders dated 08.07.2025 and 30.07.2025 contrary to the Instructions/Circulars issued by the Central Board of Direct Taxes (CBDT) referred to in the decision rendered by this Court in *Kannammal's case* cited *supra*. It is also seen that prior to the passing of impugned orders, the petitioner was not provided with an effective opportunity of hearing. Therefore, this Court is of the opinion that the impugned orders passed by 1st respondent are liable to be quashed.

13. In view thereof, this Court is inclined to dispose of this Writ Petition on the following terms:

(i) The impugned orders dated 08.07.2025 and 30.07.2025 passed by 1st respondent are quashed and the matter is remanded back to the 1st respondent for fresh consideration.



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(ii) The 1st respondent is directed to consider the petitioner's Stay

Application dated 07.07.2025 afresh and dispose of the same, on merits and in accordance with law, within a period of two weeks from the date of uploading of web copy of this order without waiting for the receipt of a certified copy of this order.

(iii) Since the impugned orders dated 08.07.2025 and 30.07.2025 itself have been quashed, the impugned Notice dated 08.09.2025 issued to 5th respondent cannot survive any longer and hence, the same is also quashed. Consequently, the attachment made in petitioner's Bank Account is ordered to be lifted forthwith.

14. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

15.09.2025

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Index : Yes/No

Speaking Order (or) Non-Speaking Order



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1. Deputy Commissioner of Income Tax,
Corporate Circle 3(1),
Wanaparthi Block, Uthamar Gandhi Salai,
Chennai – 600 034.
2. The Assessing Officer,
Assessment Unit – National
Faceless Assessment Centre,
New Delhi.
3. Commissioner of Income Tax (Appeals),
National Faceless Appeal Centre,
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