BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 18.02.2025

CORAM:

THE HONOURABLE MR.JUSTICE VIVEK KUMAR SINGH

W.P.(MD)No.4191 of 2025

MDA-HSG. 109, Rajapalayam Taluk,
Cooperative Housing Society Limited,
Rep. by its Secretary,
No.121, Chinna Suraikaipatti Street,
Rajapalayam – 626 117,
Virudhunagar District. : Petitioner

Vs.

The Income Tax Officer,
Ward No.3,
130, Railway Feeder Road,
Virudhunagr - 626001. : Respondent

PRAYER: Writ Petitions filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, to call for the records relating to the impugned demand notice vide DIN and Letter No.ITBA/RCV/F/17/2024-25/1072427784(1) dated 22.01.2025 and consequential rejection of petition for stay of demand vide DIN and Letter No.ITBA/RCV/F/107/2024-25/1072783034(1) dated 31.01.2025 issued by the respondent and quash the same and consequently forbearing the respondent from taking any coercive steps to collect the dispute tax pending appeal before the Appellate Authority.

For Petitioner : Mr.D.Shanmugaraja Sethupathi
For Respondent : Mr.N.Dilip Kumar
Standing Counsel

ORDER

Assailing the demand notice dated 22.01.2025 and the consequential rejection order dated 31.01.2025, rejecting the stay of demand passed by the respondent, the petitioner has filed this writ petition.

2.The case of the petitioner is that the respondent issued an assessment order under Section 147 read with Section 144B of the Income Tax Act, dated 16.03.2023, wherein, an addition of Rs.1,13,52,481/- was made to the income as unexplained income under Section 69A and a tax demand of Rs.1,80,63,082/- was levied. Aggrieved by the assessment order dated 16.03.2023, the petitioner society filed an appeal on 14.04.2023, before the Appellate Authority/Commissioner of Income Tax (Appeals), Chennai and the same is still pending.

3. The further case of the petitioner is that while the appeal is pending, the respondent issued a demand notice dated 21.08.2023, requesting the petitioner to furnish the details of 20% of the tax paid in total arrears as per the notification of the Central Board of Direct Taxes. Thereafter, the petitioner society filed a petition dated 29.08.2023, requesting that the recovery proceedings for the collection of the disputed tax be kept in abeyance until the disposal of the appeal. The petitioner also submitted another application dated 25.01.2025, seeking to keep the recovery of the disputed tax in abeyance until the appeal pending before the Commissioner of Income Tax (Appeals) is disposed of. However, the application for stay was rejected by the impugned order dated 31.01.2025. Hence, the petitioner is constrained to file the present writ petition.

4. The learned counsel for the petitioner by producing an order of this Court in ***Queen Agencies v. Assistant Commissioner of Income Tax (Circle – 1)***, [WP(MD) No.5550 of 2020], this order squarely covers the issue involved in this writ petition.

5. Mr.N.Dilip Kumar, the learned Standing Counsel argued that the impugned order aligns with the circular issued by the Central Board of Direct Taxes.

6. Heard the learned counsel for the parties and perused the materials available on record.

7. Upon reviewing the order of this Court in ***Queen Agencies*** (cited supra), it is found that this Court had elaborately discussed the powers to be exercised by the Assessing Officer. The relevant portion of the order, which is extracted below, provides further clarity on this matter :

> *"14.It is needless to say that the petition under Section 220(6) of the Act will have to be filed only before the assessing officer after filing the statutory appeal. The learned standing counsel claim that at present the assessees are indiscriminately filing the stay petitions. They move the appellate authority, the assessing officer and also the Principal Commissioner of Income Tax simultaneously. The Principal Commissioner of Income Tax is only the reviewing authority. It is only when the*

assessing officer makes a reference or if the assessee is aggrieved by the order passed by the assessing officer, by virtue of Circular dated 29.02.2016, the Principal Commissioner of Income Tax will get the jurisdiction to exercise his power under Section 220(6) of the Act and not otherwise. In other words, he cannot assume the jurisdiction in the first instance. The assessees must also ensure that the petition filed under Section 220(6) of the Act contain all the relevant particulars so that the assessing officer can pass an appropriate order by bearing in mind the trinity principles. The order passed by the assessing officer will hold good and will have to give away as and when the appellate authority passes an order on the stay petition filed by the assessee/appellant."

8. In view of the above, the impugned order in the writ petition is set aside and the matter is remitted back to the respondent for fresh consideration. The respondent shall pass orders in accordance with the law within a period of three months. Until then, no coercive steps shall be taken against the petitioner to collect the disputed tax pending appeal before the Appellate Authority.

9. The writ petition is allowed. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

18.02.2025

Index : Yes / No
Internet : Yes / No

PKN

To

The Income Tax Officer,
Ward No.3,
130, Railway Feeder Road,
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VIVEK KUMAR SINGH, J.

PKN

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