BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **11.08.2025**

CORAM:

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.(MD) No. 21870 of 2025
and
W.M.P.(MD) No.16980 of 2025

Retnaraj Joanitta ... Petitioner

Vs

1. The Commissioner of Income Tax (Appeals),
New Building III Floor,
46/108, M.G. Road,
Nungambakkam,
Chennai - 34.

2. The Income Tax Officer,
International Taxation Ward,
6 R, AVM Complex,
North Cotton Road,
Tuticorin.

3. The Income Tax Officer, Ward – 1,
Income Tax Office,
Nellai City Centre,
Thiruchendur Road,
Rahmath Nagar,
Tirunelveli. ... Respondents

PRAYER: Writ Petition 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 order passed by the second respondent *vide* his Letter No. ITBA/RCV/F/17/2025-2026/1077144068 (1), dated 18.06.2025 as well as the consequential order in Din Letter No. ITBA/RCV/F/17/2025-2026/1078236332(1), dated 07.07.2025 and quash the same and consequently, direct the first respondent to decide the petitioner's appeal filed against the Assessment order, dated 14.05.2025 passed by the second respondent as expeditiously as possible within a time frame, without insisting upon the payment of 20% of the demand amount, as a precondition for deciding the appeal.

For petitioner : Mr. Gregory Retnaraj

For respondents : Mr.J.Parekh Kumar
Senior Standing Counsel

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ORDER

This Writ Petition is disposed of at the time of admission with the consent of the learned counsel for the petitioner and learned Senior Standing Counsel for the respondents and after dispensing with the counter from the respondent.

2. The impugned order has been passed purportedly under Section 220(6)

of the Income Tax Act, 1961 after the petitioner suffered an adverse order on 14.05.2025 for the assessment year 2020-21.

2. Aggrieved by the said assessment order, the petitioner has also filed an appeal before the Appellate Commissioner under Section 246A of the Income Tax Act, 1961. The appeal is still pending for final disposal before the Appellate Commissioner.

3. In the impugned order, the respondent has placed a reliance on Central Board of Direct Taxes Circular/Instructions dated 31.07.2017, as per which the petitioner required to pre-deposit 20% of the disputed tax. The respondent has placed reliance in the following decisions to come to the above conclusion that the application for wive/stay the impugned order cannot be entertained:

1.***Nirmal Kisohor Mehta vs. ACIT -HC Mumbai,***

2.***Saroj Sangwan, New Delhi vs. ITO, Ward -4(1), Gurgaon - ITAT, Delhi,***

3.***Pavan Morarka vs. ACIT-2(3), Mumbai – HC Mumbai.***

4. On the other hand, the learned counsel for the petitioner has relied upon the following decisions:

1. ***Soul vs. Deputy Commissioner of Income Tax*** reported in ***(2008) 08 DEL CK 0108***;
2. ***Taneja Developers & Infrastructure vs. Assistant Commissioner of Income Tax (W.P.(C) No.6956 of 2009 dated 24.02.2009)*** rendered by Delhi High Court;
3. ***Principal Commissioner of Income Tax vs. M/s.L.G. Electronics India Pvt. Ltd (Civil Appeal No.6850 of 2018, dated 20.07.2018)*** rendered by Hon'ble Supreme Court;
4. ***M/s.Queen Agencies vs. The Assistant Commissioner of Income Tax (W.P.(MD) No.5550 of 2020, dated 08.04.2021)*** rendered by this Court;
5. ***Charu K.Bagadia Vs. Assistant Commissioner of Income Tax,*** reported in ***CDJ 2022 MHC 3095***;
6. ***Pavan Morarka & another vs. The Assistant Commissioner of Income Tax*** reported in ***CDJ 2022 BHC 283***;
7. ***Union Bank of India & Others vs. Rajeev Bansal*** reported in ***CDJ 2024 SC 840***;
8. ***VME Infrastructure Private Limited vs. Income Tax Officer (W.P.No. 18140 of 2025, dated 16.05.2025)*** rendered by this Court.

5. It is noticed that the Hon'ble Supreme Court in ***M/s.L.G. Electronics India Pvt. Ltd*** (cited supra) has upheld the order of the Division Bench of the Delhi High Court, dated 08.08.2017 in W.P.(C) No.6778 of 2017 in Civil Appeal No.6850 of 2018, dated 20.07.2025. Operative portion of the order of the Delhi High Court as under:

> *"3. The challenge in this petition is to the order dated 2nd August, 2017 passed by the Principal Commissioner of Income Tax ('PCIT') by which the Petitioner was directed to pay 20% of the tax demand of Rs. 32 crores amounting to Rs. 6.4 crores by 11th August, 2017 in order to get a stay of the demand up to 15th December, 2017 pending consideration of the Petitioner's appeal before the Commissioner of Income Tax (Appeals) ['CIT(A)'] against the order dated 30th June, 2017 passed by the Assistant Commissioner of Income Tax-Circle 15(1) (hereafter Assessing Officer – AO), levying a penalty under Section 271 (1) (c) of the Income Tax Act, 1961 ('Act'). By the said order the AO raised a demand of Rs. 32,00,07,958 for the Assessment Year ('AY') 2007-08 and directed the Petitioner to deposit the said amount on or before 31st July, 2017.*
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> *4. The Petitioner-Assessee filed an appeal against the order before the CIT (A). The Petitioner also filed an application under Section 220(6) of the Act seeking stay of the recovery proceedings. In the said application for stay, the Assessing Officer ('AO') directed the Petitioner, by order dated 20th July 2017, to deposit 15% of the total tax demand in terms of the Office Memorandum ('OM') dated 29th February, 2016.*
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> *5. The contention of the Petitioner is that the limitation period, in terms of Section 275 (1) (a) of the Act, had already expired. Aggrieved by the above order dated 20th July, 2017, the Petitioner went before the PCIT who, by the impugned order dated 2nd August, 2017, disposed of the application of the Petitioner by the following*

order sheet entry. "Present Sh. Vishal Rastogi, AGM of LG requested to make payment of 20% of the tax demand of 32Cr. Amounting to 6.4 Cr. by 11.08.2017 to get stay of demand upto 15.12.2017"

6. Mr. Deepak Chopra, learned counsel for the Petitioner, has produced before this Court a copy of OM dated 31st July, 2017 which modifies the earlier OM, dated 29th February, 2016, issued by the Central Board of Direct Taxes ('CBDT'), stating that standard rate for grant of stay had been revised from 15% to 20% of the disputed demand.

7. The impugned order clearly makes no reference to the central issue in the pending appeal or the grievance of the Petitioner regarding the order passed by the AO. The impugned order in short is without reasons and is therefore unsustainable in law.

8. For the above reasons, the impugned order is set aside and a direction is issued that the Petitioner's application will once again be heard by the PCIT on merits and without reference to the OM dated 31st July, 2017, which, on the face of it, appears to curtail his discretion. The PCIT will dispose of the application with a reasoned order not later than two weeks from the date of receipt of this order.

9. The CIT (A) shall also consider the request of the Petitioner for an expeditious disposal of the appeal.

10. The petition and the pending application are disposed of in the above terms."

6. The Hon'ble Supreme Court has upheld the view as follows:

"Having heard Shri Vikramjit Banerjee, learned ASG appearing on behalf of the appellant and giving credence to the fact that he has argued before us that the administrative Circular will not operate as a fetter on the Commissioner since it is a quasi judicial authority, we only need to clarify that in all cases like the present, 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."

7. Considering the same, the impugned is quashed and the case is remitted back to the respondent to pass a fresh orders.

8. This Writ Petition is disposed of, with the above observations. No costs. Consequently, connected miscellaneous petition is closed.

11.08.2025

Index : Yes / No
Internet : Yes / No
apd

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C.SARAVANAN, J.

apd

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