BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 18.11.2015

CORAM :

THE HONOURABLE Mr.JUSTICE R.SUBBIAH

W.P.(MD).No.10171 of 2015
and
M.P.Nos.1 & 2 of 2015

Mr.N.Jegatheesan .... Petitioner

Vs.

The Deputy Commissioner of Income Tax,
Non Corporate Circle-2,
Madurai. .... Respondent

Prayer:- Writ Petition has been filed under Article 226 of the Constitution of India praying for issuance of a writ of Certiorarified Mandamus to call for the records of the respondent relating to order bearing No.PA.ADWPJ3312K/NCC -2/MDU/15-16 dated 12.05.2015 and subsequent order dated 9.6.2015 bearing proceedings No.PAN.ADWPJ3312K/NCC-2/MDU/15-16 in pursuant to representation of the petitioner dated 18.05.2015 and to quash the same with consequential direction to the respondent to consider the petition filed under Section 220(3) and 220(6) of the Income Tax Act, 1961 in conformity with the instructions of the Central Board of Direct Taxes by providing an opportunity of being heard to the petitioner.

For Petitioner - Mr.H.Naziradeen

For Respondent - Mr.R.Krishna Moorthy

ORDER

This writ petition has been filed by the petitioner praying for issuance of a writ of Certiorarified Mandamus to call for the records of the respondent relating to his order bearing No.PA.ADWPJ3312K/NCC -2/MDU/15-16, dated 12.05.2015, and subsequent order dated 09.06.2015 bearing proceedings No.PAN.ADWPJ3312K/NCC-2/MDU/15-16, in pursuant to the representation of the petitioner dated 18.05.2015 and to quash the same, with consequential direction to the respondent to consider the petition filed under Section 220(3) and 220(6) of the Income Tax Act, 1961, in conformity with the instructions of the Central Board of Direct Taxes by providing an opportunity of being heard to the petitioner.

2.The brief facts, which are necessary to decide the issue involved in this writ petition, are as follows:-

2-1.The petitioner is an assessee of income tax, having permanent account No.ADWPJ 3312 K/1(2)/MDU with the status as 'individual'. Original return of income was filed by the petitioner on 30.09.2012 for the assessment year 2012-2013 for the accounting period 01.04.2011 to 31.03.2012, wherein the total income of the

petitioner was furnished as Rs.4,91,680/- and agricultural income to the tune of Rs.45,00,000/-. After deducting rebate on agricultural income Rs.40,80,000/- and adding education cess, income tax was furnished by the petitioner as Rs.96,309/-. Further, advance tax amount of Rs.25,000/- was paid on 15.12.2011. Adding interest under Sections 234(B) and 234(C) of the Income Tax Act, 1961, net tax to the tune of Rs.78,150/- was paid under Section 140-A of the Income Tax Act,1961. However, notices under Section 143(2) dated 14.08.2013 and Section 142(1) dated 14.07.2014 of the Act 1961 were issued by the respondent to the petitioner under Computer Aided Scrutiny Selection (CASS), requiring the petitioner to produce the books of accounts. On receipt of notice, the petitioner appeared on the dates of hearing before the respondent and produced necessary information and particulars. However, according to the petitioner, the respondent made a high pitched assessment in an arbitrary manner and biased mind, determining the income of the petitioner at Rs. 59,91,680/-, by rejecting the petitioners claim of Agricultural Income and treating the same as regular income from undisclosed source.

2-2.It is stated by the petitioner that the respondent/Assessing Officer has not taken into consideration cultivation of Jasmine and teak wood in Periakooda Kovil Village,

Madurai District on a leased land from the petitioner's mother in Survey No.106 and 108 in an extent of 7.22 acres and to that effect evidences were produced by way of Patta, Adangal, Sales Bills and pesticides Bills and affidavit of petitioner's mother. Though necessary documents viz., Patta, Adangal in the name of the petitioner, Sale Bills, Pesticides Bills etc., were produced by the petitioner, the respondent/Assessing Officer did not take into consideration the same and made a high pitched assessment. It is the case of the petitioner that the petitioner proved ownership of land, leased land of his mother in Periakoodakovil Village on a total extent of 16.05 acres and that agricultural operations were carried on by the petitioner.

2-3.It is further case of the petitioner that the respondent did not take into consideration the agricultural operations in Velampadi Village in S.No.405, 406 and 411 in an extent of 19-81 acres, in which Gloriosa Superba, Drumstick, and Coconut are cultivated by the petitioner as it is evident from Patta, Adangal, Lease Deed, Sale Bills, Payment of lease rent to one Mr.A.Balaguru. Even though the Bank Statement for above payments by cheques, Certificate of Deputy Director Horticulture regarding quantity of yield, VAO Certificate to the effect that the petitioner is cultivating the land, and pesticides Bills were produced by the petitioner, the respondent did not consider the

same and brushed aside the evidence produced by the petitioner for having carried on the agricultural operations and earned agricultural income therefrom on a total extent of 35.86 acres. According to the petitioner, the gross agricultural income received is Rs.85,54,502/- and the expenditure thereon is Rs.40,54,502/-; thereby, the net income admitted is Rs.45,00,000/-. It is further stated by the petitioner that for the earlier assessment year 2011-2012, the respondent verified the above facts and accepted the extent of land owned and leased and crops cultivated thereon namely Jamine and Gloriosa Superba and passed orders dated 31.03.2014 under Section 143(3) of the Income Tax Act. However, for the assessment year 2012-2013, the respondent made high pitched assessment, by assessing the total income as Rs.59,91,680/- and declined to accept the agricultural income of Rs.45,00,000/- as well as Rs.5,00,000/- each repaid to the petitioner's own brother totaling Rs.10,00,000/- from out of the petitioner's current account, which formed part of the return of income filed by the petitioner, as verified and certified by the Charted Accountant.

2-4.Against the order of assessment passed by the respondent, the petitioner has filed an appeal under Section 246A of the Income Tax Act, on 22.04.2015 and the same is still pending.

Sections 246, 246A, 250 and 251 of the Income Tax Act, do not confer any specific power on the Commissioner of Income Tax (Appeals), the first appellate authority, to grant stay against the recovery of disputed demand. Hence, a petition under Sections 220(3) & 220(6) of the Income Tax Act was filed by the petitioner on 29.04.2015 before the respondent seeking stay of recovery of demand amount. But, by way impugned orders the respondent disposed of the said petition filed under Sections 220(3) & 220(6) of the Income Tax Act, directing the petitioner to pay 50% of the demand amount, pending the appeal.

2-5.Aggrieved over the same, the present writ petition has been filed by the petitioner for the relief as stated supra, contending that in the present case, very high pitched assessment was made by the assessing authority for the assessment year 2012-2013 without taking into consideration agricultural income and made assessment with a ten fold increase on total income; that by considering the petition filed by the petitioner under Sections 220(3) & 220(6) of the Income Tax Act, the respondent ought to have treated the petitioner as not being in default in respect of the amount in dispute; on the other hand, the respondent in a usual manner simply passed an order dismissing the petition filed under Sections 220(3) & 220(6) of the Income Tax Act, without assigning any reason in a mechanical manner.

Further, Instruction No.95 of the Central Board of Direct Taxes, dated 21.08.1969, is squarely applicable to the case of the petitioner. Hence, by taking into consideration the said instruction of the CBDT, the respondent ought to have allowed the petition filed by the petitioner under Sections 220(3) & 220(6) of the Income Tax Act.

3.The respondent has filed a counter, *inter aliea*, contending that the petitioner/assessee failed to prove the actual agricultural activities done by him. Correspondingly, the earning of agricultural income from genuine agricultural operations were not proved by the petitioner to the satisfaction of the Assessing Officer. Hence, additions were made rejecting the theory of agricultural income. The petitioner has referred the scrutiny assessment order for the Assessment year 2011-2012. Agricultural operations and income thereof varies from year to year and seasons to season. Therefore, reliance placed by the petitioner on the scrutiny assessment order for the Assessment year 2011-2012 is not relevant for the assessment year 2012-2013. Mere proof of ownership of agricultural land is not adequate. The burden of proving actual earning of agricultural income from genuine agricultural operations lies on the petitioner/assessee; but, the petitioner/assessee has not proved the same to the satisfaction of the

Assessing Officer. Taking into account various factors, the petitioner/assessee was requested to pay 50% of the disputed demand. Recovery will not defeat the purpose of appeal, since excess recovery, if any, will be refunded to the petitioner/assessee, as per the procedure laid down in the Income Tax Act, 1961. The petitioner/assessee has not explained how the balance of convenience is in favour of him, especially when he has not proved the agricultural operations. Merely because the petitioner/assessee has filed appeal before CIT (A), a blanket stay cannot be granted automatically. The respondent/Assessing Officer has a duty to collect the taxes as per the provisions of Income Tax Act, 1961, CBDT Circulars and Principles laid down by Courts in various case laws. As such, merely because absolute stay was not granted, it cannot be claimed by the petitioner/assessee that the Assessing Officer has not used his discretion. In fact, CBDT Instruction 95, dated 21.08.1969, has been superseded and the Assessing Officer has to exercise his discretion as per Instruction No.1914 dated 02.12.1993. In the instant case, the Assessing Officer has used his discretion correctly. Additions have been made because of the petitioner's failure to satisfy the Assessing Officer regarding the genuineness of agricultural operations and the income derived thereof. The petitioner had requested for a blanket

stay of entire demand merely on the ground that he has filed appeal against the additions; but no reasons explaining the genuine hardship faced by him in payment of the disputed taxes have been given in the petition under Sections 220(3) & 220(6) of the Income Tax Act. Thus, the respondent sought for dismissal of the writ petition.

4.Heard the submissions made on either side and perused the materials available on record.

5.It is the submission of the learned counsel for the petitioner that the petitioner herein is an assessee of Income Tax, having permanent account No.ADWPJ 3312 K/1(2)/MDU with the status as 'individual'. For the assessment year 2012-13, original return of income was filed by the petitioner for the accounting period 01.04.2011 to 31.03.2012, wherein the total income of the petitioner was furnished as Rs.4,91,680/- and agricultural income to the tune of Rs.45,00,000/-. After deducting rebate on agricultural income Rs. 40,80,000/- and adding education cess, the income tax was furnished by the petitoner as Rs.96,309/-. The respondent/Assessing Officer severed notice on the petitioner requiring him the produce the books of accounts. The petitioner appeared before the respondent on the

dates of hearing and produced necessary information and particulars. According to the the petitioner, without considering the explanations/informations, the respondent made a high pitched assessment in an arbitrary manner and determining the income at Rs. 59,91,680/- by rejecting the petitioners claim of agricultural income and treated the same as regular income from undisclosed source. Aggrieved over the same, the petitioner has filed an appeal before the Commissioner of Income Tax (Appeals), under Section 246A of Income Tax Act. Since Sections 246, 246A, 250 and 251 of the Income Tax Act, 1961 do not confer any specific power on the Commissioner of Income Tax (Appeals) to grant stay against the recovery of disputed demand, the petitioner has filed a petition under Sections 220(3) & 220(6) of the Income Tax Act before the respondent on 29.04.2015, for grant of stay of collection of tax amount, pending appeal. But, the respondent rejected the said petition and directed the petitioner to pay 50% of the demand amount, pending appeal.

6.The learned counsel for the petitioner submitted once the demand under Section 156 of IT Act, 1961 was issued prescribing the period of 30 days from the date of service of notice, the assessee should pay the same, otherwise penalty and interest will flow against

the assessee.

7.In fact, since the respondent is pressing hard and taking coercive steps for recovery, the petitioner filed a writ petition in W.P. (MD).No.12666 of 2015, for disposal of the appeal. This Court has also passed an order on 20.08.2015 in the said writ petition, directing the Commissioner of Income Tax (Appeals) to dispose of the appeal preferred by the petitioner within a period of six months. Now, pending the appeal, the impugned orders have been passed by the respondent directing the petitioner to pay 50% of the demand amount as per the CBDT Instruction No.1914, dated 02.12.1993 and to pay the balance amount after the disposal of the appeal.

8.Now, it is the contention of the learned counsel for the petitioner that since the assessment made by the petitioner is a high pitched one, as per CBDT Instruction No.95, dated 21.08.1969, the petitioner should be treated as **"not being in default in respect of the amount in dispute in the appeal",** within the ambit of Section 220(3) and 220(6) of the Act in view of the pending appeal to avoid penal interest as well as for granting absolute stay.

9.But, according to the learned counsel for the respondent, CBDT Instruction No.95 dated 21.08.1969, has been superseded by CBDT Instruction No.1914 dated 02.12.1993 and only after taking into consideration all the relevant facts of the case of the petitioner, the respondent/Assessing Officer has rejected the petition filed by the petitioner under Sections 220(3) & 220(6) of IT Act for stay of the demand, and directed the petitioner to pay 50% of the demand amount, pending the disposal of the appeal.

10.But, it is the assertive submission of the learned counsel for the petitioner that the respondent is bound to grant stay by treating the petitioner as **"not being in default in respect of the amount in dispute in the appeal",** as per Section 220(6) of the Income Tax Act. In this regard, the learned counsel for the petitioner has also relied upon number of judgments.

11.Apart from the above submissions, the learned counsel on either side have also made elaborate arguments on factual aspect of the case with regard to income derived by the petitioner from the agricultural operations.

12.However, I am of the opinion that though very many contentions have been raised on factual aspects, the only question that has to be decided in this case is *whether CBDT Instruction No.95, dated 21.08.1969 has been superseded by CBDT Instruction No.1914, dated 02.12.1993 and whether the petitioner is entitled for grant of stay of the recovery of demand amount, by treating him as* **"not being in default in respect of the amount in dispute in the appeal",** within the ambit of Sections 220(3) and 220(6) of the Income Tax Act, 1961.

13.Before entering into the discussion, it would be appropriate to extract Sections 220(3) and 220(6) of the Income Tax Act.

> **Section 220(3):-** Without prejudice to the provisions contained in Sub-Section (2) on an application made by the assessee before the expiry of the due date under sub-section (1) the (assessing) officer may extent the time for payment or allow payment to installments, subject to such conditions as he may think fit to impose in the circumstances of the case.
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> **Section 220(6):-** Whereas assessee has presented an appeal under Section 246 (or Section 246A) the (Assessing) Officer may in his discretion and subject to such conditions as he may think fit to

> impose in the circumstances of the case, treat the assessee as not being in default in respect of the amount in dispute in the appeal, even though the time for payment was expired, as long as such appeal remains undisposed of."

14.It is stated that on receipt of notice under Section 156 of the IT Act, if the amount specified in the demand notice is not paid within the period mentioned under Sub-Section 1, the assessee is liable to pay simple interest at 1% for every month or part of a month, commencing from the day immediately following the end of the period mentioned in sub-section 1 and ending with the day, on which the amount is paid. Section 220(3) purports very clearly, without prejudice to the notice of demand under Section 156, that the discretion has been conferred on the Assessing Officer either to extent time for payment or allow payment by installment, subject to such conditions as he may think fit to impose the circumstances of the case.

15.But, so far as the case of the petitioner is concerned, it falls within the ambit of Sections 220(3) & 220(6), in view of the pendency of the appeal, in order to treat the petitioner/Assessee being not in default, to avoid penal/interest as well as granting absolute stay, since

the assessment made by the Assessing Officer is high pitched assessment. "High Pitched Assessment" means where the income determined and assessment was substantially higher than the returned income, say twice the later amount or more, the collection of the tax in dispute should be kept in abeyance till the decision on the appeal provided there were no lapses on the part of the assessee. In the instant case, the assessment in question in the pending appeal before the Commissioner of Income Tax (Appeals) is a High Pitched Assessment, because the petitioner has submitted his return for the accounting period, that is 01.04.2011 to 31.03.2012 for the assessment year 2012-2013 as Rs.4,91,680/- including agricultural income of Rs.45,00,000/-. But, the respondent having formed adverse opinion, as set out in the assessment order dated 31.3.2015, negativing agricultural income, made additions to the tune of Rs. 55,00,000/-. Thereby, adding admitted income of Rs.4,91,680/- with addition of Rs.55,00,000/-, the respondent arbitrarily without providing opportunity of cross-examination contrary to the powers invested on him under the fiscal statute, arrived total income as Rs. 59,91,680/-. Thereby, the respondent determined income on assessment substantially higher than the returned income of Rs. 4,91,680/-, by way of 14 times, made assessment arriving total

income of Rs.59,91,680/-. Therefore, the assessment made by the respondent is a "High Pitched Assessment".

16.It is the contention of the learned counsel for the petitioner that pending the appeal, the petitioner is entitled for stay of recovery of the demand amount, as his case falls within the ambit of Sections 220(3) & 220(6) of the IT Act. In view of the pendency of the appeal, the respondent ought to have passed an order treating him as ***not being in default in respect of the amount in dispute in the appeal***, by placing reliance on CBDT Instruction No.95 dated 21.08.1969. But, according to the respondent, the said CBDT Instruction No.95 was superseded and as such, the respondent has exercised his power under subsequent Instruction No.1914 dated 02.12.1993. But, the learned counsel for the petitioner, by relying upon number of judgments submitted that CBDT Instruction No.95 is still in force.

17.Therefore, it would be appropriate to refer some of the decisions in this regard. In the case of ***Taneja Developers & Infrastracture Ltd., Vs. Assistant Commissioner of Income Tax, Delhi & ors*** in **W.P.(C).No.6956 of 2009, dated 24.02.2009**, the

Division Bench of Delhi High Court has held as follows:-

> *"8.Relying upon the said Instruction No. 1914 of 1993, Mr.Jolly submitted that all previous instructions stood superseded which included the supersession of said Instruction No.96. He further submitted that paragraph No.2(C), which deals with guidelines for staying demand, specifically requires that a demand be stayed only if there are valid reasons for doing so and that a mere filing of an appeal against the assessment order will not be a sufficient reason for staying recovery of a demand.*
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> *9.Having considered the arguments advanced by the learned counsel for the parties, we are of the view that although Instruction No. 1914 of 1993 specifically states that it is in supersession of all earlier instructions, the position obtaining after the decision of this Court in* ***Valvoline Cummins Ltd., (Supra)*** *is not altered at all. This is so because paragraph No.2(A) which speaks of responsibility specifically indicates that it shall be the responsibility of the Assessing Officer and the TRO to collect every demand that has been raised "except the following', which includes "(d) demand stayed in accordance with the paras B and C below". Para B relates to stay petitions. As extracted above, Sub-clause (iii) of para B clearly indicates that a higher/superior*

> *authority could interfere with the decision of the Assessing Officer/TRO only in exceptional circumstances. The exceptional circumstances have been indicated as - "where the assessment order appears to be unreasonably high pitched or where genuine hardship is likely to be caused to the assessee.". The very question as to what would constitute the assessment order as being reasonably high pitched in consideration under the said Instruction No.96 and, there, it has been noted by way of illustration that assessment at twice the amount of the returned income would amount to being substantially higher or high pitched. In the case before this Court in* ***Valvoline Cummins Ltd., (supra)*** *that assessee's income was about eight (8) times the returned income. This Court was of the view that was high pitched. In the present case, the assessed income is approximately 74 times the returned income and obviously, this would fall within the expression "unreasonably high pitched". (Emphasis supplied)."*

A reading of the above dictum would show that if assessment order is unreasonably high pitched or genuine hardship is likely to be caused to the assessee, then the assessee is entitled to be treated as ***not being in default in respect of the amount in dispute in the appeal.***

In the case reported in ***(1997) 223 ITR 192 (Raj) [Maharana Shri Bhagwat Singhji of Mewar Vs. Income-Tax Appellate Tribunal, Jaipur Bench, and others),*** the Rajasthan High Court has held as follows:-

> "accordingly, on the facts, that the factors which are relevant for deciding the stay applications primarily are a *prima facie* case, balance of convenience, financial status of the petitioner, hardship and also the interest Revenue. In the instant case there was an order of the court restraining the accountable person from alienating/disposing of the properties of the estate. The value of the estate which was determined by the authority was much more than twice the returned value. Hence, the Instruction No.96 of August 21, 1969, was applicable. It was also established that the accountable person had no cash belonging to the estate. A perusal of the order of the Tribunal indicated that the contention raised by the petitioner before the Tribunal for staying the total recovery was not contraverted and no relevant and convincing material regarding the financial status of the petitioner was placed before the Tribunal to establish that the petitioner was in a position to deposit 25 per cent of the disputed duty. The recovery of the entire duty had to be stayed till the disposed of the appeal."

In the case reported in ***2011 ITR 158 Bom [Kec International Ltd Vs. B.R.Balakrishnan and ors],*** the Bombay High Court has held as follows:-

> ".....Hence, we intend to lay down certain parameters which are required to be followed by the authorities in cases where a stay application is made by an assessee pending appeal to the first appellate authority.
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> (a)While considering the stay application, the authority concerned will at least briefly set out the case of the assessee.
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> (b)In cases where the assessed income under the impugned order far exceeds returned income, the authority will consider whether the assessee has made out a case for unconditional stay. If not, whether looking to the questions involved in appeal, a part of the amount should be ordered to be deposited for which purpose, some short *prima facie* reasons could be given by the authority in its order.
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> (c)In cases where the assessee relies upon financial difficulties, the authority concerned can briefly indicate whether the assessee is financially sound and viable to deposit the amount if the authority wants the assessee to so deposit.
>
> (d)The authority concerned will also examine

whether the time to prefer an appeal has expired. Generally, coercive measures may not be adopted during the period provided by the statute to go in appeal. However, if the authority concerned comes to the conclusion that the assessee is likely to defeat the demand, it may take recourse to coercive action for which brief reasons may be indicated in the order.

(e)We clarify that if the authority concerned complies with the above parameters while passing orders on the stay application, then the authorities on the administrative side of the Department like respondent No.2 herein need not once again give reasoned order."

In the judgment reported in ***346 ITR 375 (M/s.Maheswari Agro Industries Vs. Union of India and others),*** it has been held by the Rajasthan High Court as follows:-

"52..... The mandate of Parliament in sub-section (6) seems to be that the lower Assessing Officer should abide by and being bound by the decision of the appellate authority, should normally wait for the fate of such appeal filed by the assessee. Therefore, his discretion of not treating the assessee in default, conferred under sub-section (6) should ordinarily be exercised in favour of assessee, unless the

overriding and overwhelming reasons are there to reject the application of the assessee under Section 220(6) of the Act. The application under Section 220(6) of the Act cannot normally be rejected merely describing it to be against the interest of Revenue if recovery is not made, if tax demanded is twice or more of the declared tax liability. The very purpose of filing of appeal, which provides an effective remedy to the assessee is likely to be frustrated, if such a discretion was always to be exercised in favour of revenue rather than assessee.

53.The tendency of making high pitched assessments by the Assessing Officers is not unknown and it may result in serious prejudice to the assessee and miscarriage of justice & sometimes may even result into insolvency or closure of the business if such power was to be exercised only in a pro revenue manner. It may be like execution of death sentence, whereas the accused may get even acquittal from higher appellate forums or courts. Therefore, this Curt is of the opinion that such powers under sub-section (6) of Section 220 of the Act also have to be exercised in accordance with the letter and spirit of Instruction No.95 dated 21.08.1969, which even now holds the field and its spirit survives in all subsequent CBDT Circulars

quoted above, and undoubtedly the same is binding on all the assessing authorities created under the Act."

From the reading of the above cited judgments, it is clear that it is incorrect to state that DBDT Instruction No.1914, dated 02.12.1993 supersedes all previous instructions. Although instruction No.1914 specifically states that it is in supersession of earlier instructions, the position obtaining after the decision of the case in ***Volvoline Cummins Limited Vs. DCIT (2008) 307 ITR 103 (Del)*** is not altered at all. This is so, the DBDT Instruction No.95, dated 21.08.1969 was issued with the consent of the informal consultative committee held on 13th May, 1969 formed under the business rules of the Parliament, which even now holds the field.

18. Hence, I am of the opinion that the tendency of making high pitched assessments by the Assessing Officer is not unknown and it may result in serious prejudice to the assessee and miscarriage of justice & sometimes may even result into insolvency or closure of the business if such power was to be exercised only in a pro-revenue manner. Hence, I am of the opinion that the powers under Sections 220(3) & 220(6) of IT Act have to be exercised in accordance with the

letter and spirit of CBDT Instruction No.95 dated 21.08.1969, which is binding on all the assessing authorities created under the Act.

19.Therefore, the impugned order passed by the respondent without considering CBDT Instruction No.95, dated 21.08.1969 is against the principles laid down in the judgments stated supra. In the absence of any specific bar to provide an opportunity in the provision, the respondent ought to have provided an opportunity to get absolute stay till the disposal of the appeal as well as in consideration of the reasons to treat the assessee as 'not being in default', in order to avoid interest and penalty. Whereas in this case the Assessing Officer had failed to provide an opportunity of being heard prior to disposal of the application under Section 220(3) for stay. Hence, I am of the opinion that the impugned orders are liable to be set aside.

20.For the foregoing reasons, the writ petition deserved to be allowed and accordingly, the same is allowed and consequently, the impugned orders passed by the respondent are set aside and the respondent is directed to consider the petition filed by the petitioner under Section 220(3) and 220(6) of IT Act, in conformity with CBDT Instruction No.95, dated 21.08.1969, by providing an opportunity of

being heard to the petitioner, and pass orders in accordance with law, as early as possible.

No costs. Consequently, connected Miscellaneous Petitions are closed.

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11.2015

Index : Yes / No
Internet : yes / No
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To
The Deputy Commissioner of Income Tax,
Non Corporate Circle-2,
Madurai.

R.SUBBIAH, J.,

ssv

Pre-delivery order
in

W.P.(MD).No.10171 of 2015
and
M.P.Nos.1 & 2 of 2015

.11.2015