IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 06.05.2022

CORAM:

THE HONOURABLE MRS. JUSTICE S.ANANTHI

W.P.No.12122 of 2022
and
W.M.P.Nos.11557 and 11559 of 2022

Yeswath Kavitha ... Petitioner

Vs.

The Income Tax Officer
Income Tax Department
National Faceless Assessment Circle
Ministry of Finance
Delhi. ... Respondent

Prayer: Writ petition filed under Section 226 of the Constitution of India, seeking to issue a Writ of Certiorarified Mandamus, calling for the records of the Respondent bearing DIN and Letter No.ITBA/RCV/F/17/2022-23/1042889303(1) dated 28.04.2022 in pursuant to the Application of the petitioner dated 29.03.2022 under Section 220(6) of the Income Tax Act, 1961, and quash the same with consequential direction to the Respondent to consider the petition filed under Section 220(6) of the Act 1961 by providing an opportunity of being heard to the petitioner.

For Petitioner : Mr.Haja Nazirudeen
Senior Counsel
For Mr.P.N.Rajan

For Respondent : Ms.Hema Muralikrishnan
For Mr.A.P.Srinivas

ORDER

By consent of both parties, this Writ Petition is taken up for final disposal at the admission stage itself.

2. **The case of the petitioner in brief:**

The petitioner is a dealer in petroleum products under dealership from Indian Oil Corporation Ltd., and engaged in running retail outlet for petrol and diesel, petrol and diesel bunks in the National Highway 544, Ettimadai, Coimbatore-641 112. The petitioner is regular in filing her Income Tax Returns along with taxes due thereon. As per the notice issued by the respondent department, on 10.03.2022, the petitioner-Assessee furnished the sales register, purchase register, cash book, bank statements and cash ledger to substantiate her case. Thereafter, assessment order was passed by the respondent on 16.03.2022. The petitioner-Assessee invoking Section 69A of the Act, 1961 made addition to the taxable income to the tune of Rs.92,15,300/- under the National Faceless Assessment Centre. Thereby, a notice of demand dated 16.03.2022 for the assessment year 2017-18 under Section 156 of the Act 1961 as well as separate Notice for penalty under Section 271AAC(1) were caused on the petitioner on the same day. Besides, penalty proceedings under Section 271(1) (c) of the Act 1961 for concealment of income were initiated separately. The petitioner/Assessee preferred first appeal under Section 246(A) of the Act before the Commissioner of Income Tax (Appeals) on 29.03.2022 through E-Filing against the assessment order dated 16.03.2022. He has also filed an separate application under Section 220(6) of the Act, before the Assessing Authority, ITO for stay of the entire disputed demand raising various grounds seeking for stay of the entire disputed demand in the said application. The petition filed under Section 220(6) of the Income Tax Act, for the Assessment year 2017-2018 determined to be payable Rs.1, 13,90,095/- by the petitioner during the pendency of the appeal before the Appellate Authority treating the petitioner/Assessee as not being in default in respect of the amount in dispute. The Assessing Officer without considering the application for exercising power under the aforesaid provision, has directed the petitioner to pay 20% of the alleged outstanding as a condition precedent to consider the application under Section 220(6) of the Act, which is contrary to law. The Assessing Officer has no authority to whittle down the statutory provision. The respondent having acted in a casual and perfunctory manner, simply passed an order dated 28.04.2022, dismissing the application under Section 220 (3) and 220 (6) of the Act, 1961, without assigning any reason in mechanical manner. The respondent has no authority to insist 20% of the disputed amount as 'condition precedent' to consider the application under Section 220(6) of the IT Act. The petitioner-Assessee being an aggrieved person, who is deprived of personal hearing in violation of principles of natural justice, has been slapped with the impugned order in arbitrary, capricious and discriminatory manner. Therefore, challenging the impugned order of the respondent dated 28.04.2022, the petitioner has filed the present writ petition before this Court.

3. The learned counsel appearing for the petitioner would submit that the impugned order passed by the respondent is contrary to law.

The petition filed under Sections 220(3) and 220 (6) of the Act 1961 ought to have been disposed of in such manner pending disposal of appeal in a fair and reasonable manner with a speaking order. The respondent ought to have exercised his discretion while disposing of the application under Section 220(3) and 220 (6) for not treating the Assessee in default' in view of the pendency of the appeal before the Commissioner of Income Tax (Appeals), but has not invested with any authority to consider the petitioner's application that the 'Assessee not being in default'. The respondent has failed to give weightage to the instructions of Central Board Direct Taxes (CBDT) as how "discretion has to be exercised. CBDT instruction No.95 dated 21.08.1969 would squarely applies to the petitioner's case. The mere statement in the order without any factual foundation, the order is not valid as held by this Court in the case of M.G.M. Transport (Madras) Pvt. Limited vs. ITO and another reported in (2008) 303 ITR 115 (Mad.). Hence, he prays to quash the order of the respondent and also direct the respondent to consider the petition filed under Section 220(6) of the Act by providing an opportunity of hearing to the petitioner.

4.The learned counsel appearing for the respondent would submit that as per the Office Memorandum dated 31.07.2017 issued by the Central Board of Direct Taxes, in partial modification of Board's Instruction No.1914 dated 21.03.1996 and 29.02.2016, in a case where the assessee is in appeal before the CIT (A) , he should pay 20% of the disputed demand. Following the aforesaid procedure, the respondent sent a letter dated 28.04.2022 requesting the petitioner to pay 20% of the demand outstanding. He would further submit that as per

5. On a perusal of the records, it appears that the appeal filed by the petitioner is pending with the appellate authority. During the pendency of the appeal, the petitioner filed an application seeking for stay till the disposal of the first appeal. To the petitioner's application, the respondent passed the impugned order dated 28.04.2022, asking the petitioner to pay 20% of the demand outstanding i.e. Rs.22,78,019/- and after the payment of the same, the remaining 80% of outstanding demand may be considered for stay under Section 220(6) of the Income Tax Act, 1961 till the disposal of the first appeal. Aggrieved over the

aforesaid impugned order, the present petition has been filed.

6. The learned counsel appearing for the petitioner would rely upon Section 220 sub clause (2) of the Income Tax Act, which reads as follows:

> *If the amount specified in any notice of demand under Section 156 is not paid within the period limited under sub-section (1), the assess shall be liable to pay simple interest at one and one-half per cent for every month or part of a month comprised in the period 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.*

Therefore, as per Section 220 sub clause (2) of the Income Tax Act, 1995, the petitioner-Assessee has to pay 1-1/2% per cent interest for every month for the outstanding amount.

7. Considering the facts and circumstances of the case and also in

view of the aforesaid submissions, this Court is inclined to direct the respondent to dispose of the appeal as expeditiously as possible, after affording an opportunity to the petitioner. Meanwhile, the petitioner is directed to deposit 10% of the outstanding demand i.e Rs.22,78,019/- within a period of four weeks, from the date of receipt of a copy of this order.

8. With the above direction, this Writ Petition stands disposed of. No costs. Consequently, connected Miscellaneous Petitions are closed.

06.05.2022

Index:Yes/No
Internet:Yes/No
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To

1. The State Transport Authority
   Chepauk, Chennai-600 005.

2. The Joint Transport Commissioner (Rules)
   Office of the Transport Commissioner
   Chepauk, Chennai-600 005.

3. The Regional Transport Officer

Salem West, Salem District.

S.ANANTHI, J.

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