



W.P.MD.No.21439 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 23.11.2022

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THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P.(MD).No.21439 of 2022
and
WMP.(MD).No.15589 of 2022

Trichy District Lorry Owners Association
Hindusthan Petroleum Corporation Dealers
No.12/A, East Boulewar Road
Trichy-620 008.
Represented by its Secretary
K.Prabakaran ... Petitioner

Vs.

- 1.The Commissioner of Income Tax (Appeals)
Income Tax Department,
National Faceless Appeal Centre,
Delhi.
- 2.The Principal Commissioner of Income Tax,
Officer of the Principal Commissioner of Income Tax,
V.P.Rathinasamy Nadar Road,
B.B.Kulam, Madurai.
- 3.The Income Tax Officer, Ward 1(1),
Office of the Income Tax Officer,
Trichy Main Buildings,
Williams Road, Cantonment,
Trichy-620 015. ... Respondents

1/12



W.P.MD.No.21439 of 2022

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus calling for the records of the 3rd Respondent in DIN and Letter No.ITBA/COM/F/17/2022-23/1042791317(1) dated 20.04.2022 and quash the same as illegal and consequently directing the Respondents to refund the sum of Rs.74,66,660.44 debited on 20.03.2020 for Assessment Year 2017-18 as due for Income Tax from the petitioner's current account No. 30550046885 maintained in State Bank of India, Rock Fort City Branch, Trichirappalli-620 002 to the petitioner along with applicable interest as per the provisions of the Income Tax Act, 1961 on the basis of the Representation of the petitioner dated 29.09.2021 within a time frame.

For Petitioner : Mr.Kannan.R.R.

For Respondents : Mr.N.Dilip Kumar
Standing Counsel

ORDER

The writ petition is filed challenging the order of the 3rd Respondent under Section 220(6) of the Income Tax Act, 1961 (hereinafter referred to as "the Act") whereby the petitioner's stay application was disposed of on the premise that, stay cannot be granted in compliance with the Rules/ instructions as the petitioner has not paid the prescribed 20% of the disputed amount till the date of passing of the impugned order.

2/12



W.P.MD.No.21439 of 2022

2. Before I proceed to deal with the grounds of challenge, it may be

relevant to very briefly set-out the facts of the case:

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i) The petitioner is an Association of persons running a Petrol Bunk under the Dealership Agreement with M/s.Hindustan Petroleum Corporation Ltd., The petitioner has been assigned the Permanent Account Number (PAN) as AAATT0620P and running the Petrol Bunk, selling Petrol, Diesel and Lubricating Oil to the general public as well as to the Association Members.

ii) Pursuant to the Demonetisation of Rs.500/- and Rs.1000/- currency notes by the Central Government from 09.11.2016, the government had permitted certain entities including the Petrol Bunks to accept demonetised currencies for purchase of Petrol, Diesel and Lubricating Oils for the period commencing from 09.11.2016 to 30.12.2016 as legal tender. In the circumstances, the petitioner accepted the demonetised currencies and deposited the same in the Bank.

iii) While so, on 24.11.2017, the 3rd Respondent issued a notice under Section 142(1)(i) of the Act, directing the petitioner to file correct and complete Income Tax Return for the assessment year 2017-18.

iv) Assessment order dated 23.11.2019 assessed the total income of

3/12



Rs.18,92,86,534/- and levied a tax of Rs.23,39,58,127/- under Section 69A

of the Act stating that the amount deposited by the petitioner in the Bank constitutes "unexplained income".

v) The petitioner's contention that the Government of India permitted the Petrol Bunks across India to accept the demonetized currency from 09.11.2016 to 30.12.2016 as legal tender. That, the demonetized currency accepted by the petitioner has been deposited in the Bank for purchase of Petrol, Diesel and Lubricating Oil and hence, would not attract Section 69A of the Act, was rejected while passing the orders of assessment.

3. Having suffered an adverse order of assessment, the petitioner filed an appeal against the order of assessment for the assessment year 2017-18 before the 1st Respondent. During the pendency of the appeal, a stay application was filed, however, even before the stay application was disposed of, recoveries were made to the extent of Rs.74.66 lakhs despite the fact that the appeal along with the stay application has been preferred. Aggrieved, the petitioners filed a writ petition in *W.P.(MD)No.3611 of 2022* praying for a writ of mandamus directing the respondents to refund the sum of Rs.74,66,660.44 debited on 20.03.2020 for the assessment year 2017-18

4/12



W.P.MD.No.21439 of 2022

as due for Income Tax from the Current Account No.30550046885 maintained in the State Bank of India, Rock Fort City Branch, Trichirappalli - 620 002, to the petitioner along with applicable interest as per the provisions of the Act, on the basis of the representation of the petitioner dated 29.09.2021 within a time frame.

4. This Court was pleased to dispose of the writ petition with a direction to the 3rd Respondent to dispose of the application filed under Section 220(6) of the Act. Importantly, while passing the above orders/ issuing the above directions, reference was also placed on the judgment of the Hon'ble Supreme Court in the case of ***L.G.Electronics India (P) Ltd., vs. Principal Commissioner of Income Tax and others*** reported in (2018) 303 CTR (Del) 650 and the judgment of this Court in the case of ***Kannammal vs. Income Tax Officer, Ward 1(1), Tirupur*** reported in (2019) 413 ITR 390(Mad) while suggesting that the trinity test laid down in those judgments has to be followed.

5. The stay application filed by the petitioner inter alia contained the following amongst other grounds, viz.,

5/12



W.P.MD.No.21439 of 2022

a. That the proviso to Section 144 of the Act, has been invoked

without affording an opportunity to the petitioner inasmuch as notices were served through ITBA but not intimated in person.

b. That the issuance of notice under Section 142(1) of the Act cannot be sustained inasmuch as the assessment year has not come to an end for invoking the said provision, more so, in view of the extended due date for filing belated return under Section 139(4) of the Act, was available till 31.03.2019.

c. That the impugned order has been made without appreciating the facts that the Reserve Bank of India and the Government of India had permitted / authorised Petrol Bunks to receive Specified Bank Notes (hereinafter referred to as "SBN").

d. That the impugned orders of assessment has been made without appreciating the Specified Bank Notes (Cessation of Liabilities) Act, 2017. The impugned order has been passed rejecting the stay application only on the premise that the petitioner has not paid the prescribed 20% of the disputed demand till date and thus the question of stay of demand in compliance with the Board's instructions is impermissible.



W.P.MD.No.21439 of 2022

e. That the impugned order did not take into account the amount

which has already been recovered while considering the prayer for stay application.

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6. It is submitted by the learned counsel for the petitioner that the impugned order is cryptic, non-speaking and being a short order, it may be relevant to extract the order in its entirety:

" In the above case, assesment was completed under Section 144 of the Act on 23.11.2019 and a demand of Rs. 23,39,58,127/- was raised by the then Assessing Officer, as the assessee has not complied to the notices issued under Section 142(1) dated 24.11.2017. Moreover, the assessee has not co-operated with the department as he had not filed any reply/explanation to all the notices issued including the show cause notice dated 07.11.2019 issued before completion of the assessment under Section 144 of the Act. It is evident that the case falls under statutory audit and the assessee has not filed Return of Income under Section 139(1) of the Act/ Audit Report under Section 44 AB of the Act within the due date.

The assessee has filed a stay petition before the undersigned, vide reference(i) cited. In the stay petition, the assessee requests stay of entire demand of Rs.23,39,58,127/- till the disposal of appeal filed by the assessee before CIT

7/12



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W.P.MD.No.21439 of 2022

(Appeals).

As per the direction mentioned in the order of this Court cited under reference(ii), the assessee was given opportunity to appear on 18.04.2022. Shri.M.Hidayathullah, Law Chambers, High Court of Madras, Madurai Bench appeared on behalf of assessee and he was heard.

As per the CBDT's office memorandum in F.No. 404/72-93-ITCC dated 31.07.2017 on partial modification of Instruction No.1914, "in a case where the outstanding demand disputed before CIT(A), the assessing officer shall grant stay of demand till disposal of first appeal on payment of 20% of the disputed demand.

As the assessee has not paid the prescribed 20% of the disputed demand till date, stay of demand cannot be granted by the undersigned in compliance to the above Board's Instruction."

7. It is further submitted by the learned counsel for the petitioner that the impugned order cannot be sustained inasmuch as it has not taken into account the trinity principle laid down by this Court in the case of *Kannammal* and Queen Agencies despite a specific direction.



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W.P.MD.No.21439 of 2022

8. To the contrary, it is submitted by the learned counsel for the respondents that the impugned order being one which is discretionary, interference under Article 226 of the Constitution of India, is not warranted.

9. Heard both sides and perused the materials placed before this Court.

10. This Court finds that the impugned order cannot be sustained inasmuch despite the specific directions of this Court in W.P.(MD)No.3611 of 2022 dated 25.02.2022 to take into account the trinity test, the impugned order has been made overlooking the same in gross disregard to the above directions. Though, normally discretionary orders are not interfered with under Article 226 of the Constitution of India, however, discretionary orders are amenable to Writ jurisdiction, and would warrant interference, if it suffers from the vice of being perverse or arbitrary.

11. I would think that the impugned order is arbitrary and perverse inasmuch as it has been made in gross disregard to the directions of this Court in W.P.(MD).No.3611 of 2022 dated 25.02.2022 inasmuch as the

9/12



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W.P.MD.No.21439 of 2022

trinity principles has been ignored. Hence, the impugned order is set aside, the respondents are directed to pass fresh orders in the stay application filed, keeping in mind the trinity principles laid down by this Court in the case of *Queen Enterprises* and the case of *Kannammal*. The stay application should be disposed of within a period of six weeks from the date of receipt of a copy of this order, until the stay application is disposed of, no further proceedings shall be taken against the petitioner.

12. With the above directions, the writ petition stands disposed of. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

23.11.2022

Index: Yes/No
Speaking order: Yes/No
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To:

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10/12



W.P.MD.No.21439 of 2022

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W.P.MD.No.21439 of 2022

MOHAMMED SHAFFIQ, J.

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W.P.(MD).No.21439 of 2022

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WMP.(MD).No.15589 of 2022

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23.11.2022

12/12