IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **26.04.2024**

CORAM

THE HONOURABLE **MR.JUSTICE SENTHILKUMAR RAMAMOORTHY**

W.P.No.10995 of 2024
and W.M.P.Nos.12075, 12077 & 12396 of 2024

C1245 The Arni Agri Producers Coop
Marketing Society Limited
383 Market Road, Arni,
Arani, Tamil Nadu 632 301
Represented by its Authorised Signatory
Mr.K.Suresh ... Petitioner

-vs-

1.Principal Commissioner of Income Tax-8,
Income Tax Office - BSNL Tower, No.16,
Greams Road, Chennai 600 006.

2.Income Tax Officer - Ward 1
II Floor, Tiruvannamalai - Income Tax Office No.25,
Valayalkara Street, Tiruvannamalai,
Tamil Nadu 606 601. ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, pleased to issue a Writ of Certiorarified Mandamus, calling for the records contained in order dated 29.03.2024 bearing ITBA / COM

/F/17/2023-24/1063634735(1) issued by the first respondent for AY 2018-19 for PAN: AACAT9589J and to quash the same as arbitrary, illegal and unjust, and to consequently direct the respondents to forbear from taking any further steps towards the recovery of the demand issued pursuant to the assessment order dated 01.03.2023 issued for the Assessment Year 2018-19, pending disposal of the Petitioner's appeal by the Commissioner of Income Tax (Appeals).

For Petitioner : Mr.Suhrith Parthasarathy
For Respondents : Dr.B.Ramaswamy, Sr. SC

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ORDER

An assessment order dated 01.03.2023 was issued in respect of assessment year 2018-19. Said order was challenged by filing a statutory appeal. In such statutory appeal, the petitioner filed an application for stay. The stay application was decided by order dated 29.03.2024 by granting stay until disposal of the first appeal subject to the condition that the petitioner pays 20% of the disputed tax demand. This writ petition is directed against such order.

2. Learned counsel for the petitioner referred to the request for stay dated 21.08.2023 and pointed out that the petitioner had explained the nature of activity carried on by it and that the petitioner has very limited resources and, consequently, would not be able to provide services to the public if directed to deposit 20%. Learned counsel contends that this representation was not taken into account while issuing the impugned order. He further submits that the position taken by the petitioner is that it is entitled to deduction under Section 80P of the Income Tax Act and that the question of whether the petitioner has made out a *prima facie* case was also not taken into consideration. By relying on a judgment of the Division Bench of the Delhi High Court in *Sushen Mohan Gupta v. Principal Commissioner of Income Tax (2024)161 taxmann.com 257*, learned counsel contends that the office memorandum dated 31.07.2016 does not made it mandatory that 20% should be directed to be remitted and that the classical principles for grant of an interim stay should be followed.

3. Dr.B.Ramaswamy, learned senior standing counsel, accepts notice for the respondents. With reference to the assessment order and the impugned order, he points out that the petitioner did not file the return of income or respond to several notices that were issued before the assessment order was issued. By referring to the impugned order, he points out that it was recorded therein that the petitioner had not established financial stringency. He also submits that the impugned order is a speaking order and that interference is not warranted under Article 226 when the appellate authority has exercised discretion appropriately. By referring to office memorandum dated 31.07.2016, he submits that the impugned order was issued in accordance with such office memorandum. Therefore, he submits that the writ petition is liable to be rejected.

4. As contended by learned senior standing counsel for the respondents, the grant of stay is in exercise of discretionary jurisdiction. This Court does not sit in appeal over such exercise of discretion. The limited question to be examined is whether such

discretion was exercised in accordance with classical principles formulated in such regard. On examining the impugned order, said order records as under in the operative portion:

> *"5. I have gone through the grounds taken in Stay Petition, the factual report of the Assessing Officer and the reply submitted by the assessee.*
>
> *6. The assessee has not brought any financial stringency faced by it on record in support of the grounds taken in Stay Petition. It is a fact that the assessee has filed appeal against the assessment order dated: 01.03.2023 passed u/s.147 r.w.s. 144B of the Act for granting stay, the Board vide OM No.404/72/93 - ITCC dated 29.02.2016 and 31.07.2016 has given much flexible option to the assessee to pay only 20% of the disputed tax and then the balance 80% of the outstanding demand can be stayed till disposal of first appeal. Accordingly, the assessee is hereby directed to pay the 20% of the disputed tax which works out to Rs.4,91,87,117/- in two installments. The first installment should be paid on or before*

28.04.2024 and the second installment should be paid on or before 28.05.2024."

5. It is noticeable that the appellate authority did not examine whether the petitioner has made out a *prima facie* case. The petitioner asserted in the request letter dated 21.08.2023 that it has limited resources and would not be able to provide services to the public if directed to make the pre deposit. Although this does not qualify as evidence of financial stringency, this aspect warranted consideration. It should also be noticed that office memorandum dated 31.07.2016 (Instruction No.1914) does not make it mandatory that the assessee should remit 20% of the disputed tax demand.

6. Solely for the purpose of enabling a reconsideration of the stay application by applying the classical principles of *prima facie* case, balance of convenience and irreparable hardship, including financial stringency, the impugned order calls for interference.

7. For reasons set out above, the impugned order is set aside and the stay application is remanded for reconsideration by the appellate authority / first respondent in accordance with the observations set out herein. For the avoidance of doubt, it is made clear that the first respondent may exercise its discretion in accordance with law. In relation to the consideration of the stay application, it is open to the petitioner to file an additional affidavit and supporting documents provided the same are filed within a maximum period of ***two weeks*** from the date of receipt of a copy of this order.

8. W.P.No.10995 of 2024 is disposed of on the above terms. No costs. Consequently, W.M.P.Nos.12075, 12077 and 12396 of 2024 are closed.

26.04.2024

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Index : No
Internet : Yes
Neutral Citation: No

To

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