

GAHC010051792023



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/1416/2023

AGILE HOSPITAL PVT. LTD.
A COMPANY INCORPORATED UNDER THE PROVISIONS OF THE
COMPANIES ACT, 1956, HAVING ITS REGISTERED OFFICE AT JAYANAGAR
CHARIALI, KHANAPARA, GUWAHATI, ASSAM, PIN- 781022 AND
REPRESENTED BY ITS DIRECTOR, DR. ARINDAM BARMAN.

VERSUS

THE UNION OF INDIA AND 4 ORS.
REPRESENTED BY ITS SECRETARY (FINANCE), MINISTRY OF FINANCE,
NEW DELHI-110001.

2:COMMISSIONER OF INCOME TAX CIRCLE-1

GUWAHATI
AAYAKAR BHAWAN
CHRISTIAN BASTI
G.S. ROAD
GUWAHATI
ASSAM-781005.

3:DEPUTY COMMISSIONER OF INCOME TAX
CIRCLE-1
GUWAHATI
AAYAKAR BHAWAN
CHRISTIAN BASTI
G.S. ROAD
GUWAHATI
ASSAM-781005.

4:ASSISTANT COMMISSIONER OF INCOME TAX
DCIT/ACIT

CIRCLE-1
GUWAHATI AAYAKAR BHAWAN
CHRISTIAN BASTI
G.S. ROAD
GUWAHATI
ASSAM-781005.

5:ASSESSING OFFICER
INCOME TAX DEPARTMENT
CIRCLE-1
GUWAHATI
AAYAKAR BHAWAN
CHRISTIAN BASTI
G.S. ROAD
GUWAHATI
ASSAM-781005

Advocate for the Petitioner : MR. R B PHOOKAN

Advocate for the Respondent : DY.S.G.I.

**BEFORE
HONOURABLE MR. JUSTICE SANJAY KUMAR MEDHI**

ORDER

15.03.2023

Heard Shri K.N. Choudhury, learned Senior Counsel assisted by Shri R.B. Phookan, learned counsel for the petitioner. Also heard Shri S.C. Keyal, learned Standing Counsel, Income Tax Department.

The petitioner is a Company running a hospital in the name of Agile Hospital. It is the case of the petitioner that on 30.09.2021, a notice under Section 142 (1) of the Income Tax Act, 1961 was issued and at around 12:54 p.m. and on the same date, without giving adequate time to the petitioner, an assessment order was passed under Section 156 of the Act. It was followed by a penalty proceeding under Section 271AAC (1) of the Act and accordingly a

demand notice on the same date was issued. The petitioner has preferred appeals which are pending consideration. Along with the said appeal, the petitioner had also filed application for stay which however has been rejected on the ground that 20 % of the assessed amount has not been made as a pre-deposit.

The learned Senior Counsel, Shri Choudhury has submitted that he would limit his arguments with a contention that the matter can be remanded back for fresh consideration in view of the order passed by the Hon'ble Supreme Court on 20.07.2018 in the case of ***Principal Commissioner of Income Tax 5 and Ors. vs. M/s Lg Electronics India Private Limited (Civil Appeal No. 6850/2018)***. By the said order by which the appeal was disposed of, it was observed that it would be open for the authorities to exercise its discretion on the facts of individual cases to grant deposit for a lesser amount than 20 % pending the appeal.

On the other hand, Shri S.C. Keyal, learned Standing Counsel, Income Tax Department has placed before this Court a questionnaire which was responded to by the Managing Director of the petitioner-Company wherein he had made a statement that though a substantial amount of the 20 % have been paid, the remaining amount of about Rs.8.72 lakhs approx would be paid by 10.03.2023. The learned Standing Counsel submits that the same being a statutory requirement, the petitioner can avail an order of stay by making deposit of the balance amount.

Responding to the said objection, the learned Senior Counsel for the petitioner has submitted that apart from the deposits which have been acknowledged, as per instructions, even the remaining deposits have been paid which however cannot be substantiated immediately. The learned Senior Counsel however submits that in view of the observation granted by the

Supreme Court to exercise sound discretion on a case to case basis, for the present an order of remand would serve the purpose.

Taking into account the rival submissions and without entering into the merits of the dispute, this Court is of the opinion that this writ petition can be disposed of at the motion stage itself by making the observation that the matter stands remanded to the Appellate Authority for reconsideration of the prayer for stay. While such reconsideration would be made, the Appellate Authority would take into account the order of the Hon'ble Supreme Court dated 20.07.2018 referred above and exercise discretion on the prayer of the petitioner to have the appeal entertained and stay granted for making a deposit less than 20%. The Appellate Authority would also keep into account that the purpose of making the pre-deposit which is to secure the presence of the assessee.

The appellate authority is directed to take into consideration the appeal expeditiously and preferably within an outer limit of 30 days from today.

The writ petition accordingly stands disposed of.

JUDGE

Comparing Assistant