IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.10.2015

CORAM :

THE HONOURABLE MR.JUSTICE V.RAMASUBRAMANIAN
AND
THE HONOURABLE MR.JUSTICE T.MATHIVANAN

Writ Appeal No.363 of 2015
and
M.P.No.1 of 2015

M/s.Jyothy Laboratories Ltd. (as transferee company into which M/s. Henkel India Limited has merged) rep.by its Manager Mr.Bakthavatchalam,K ...Appellant

Vs

1. The Deputy Commissioner of Income Tax, Large Tax Payer Unit-II, 1775, Jawaharlal Nehru Inner Ring Road, Anna Nagar, Western Extension, Chennai-101.

2. The Joint Commissioner of Income Tax, Large Tax Payer Unit-II, 1775, Jawaharlal Nehru Inner Ring Road, Anna Nagar, Western Extension, Chennai-101.

3. The Commissioner of Income Tax, Large Tax Payer Unit-II, 1775, Jawaharlal Nehru Inner Ring Road, Anna Nagar, Western Extension, Chennai-101. ...Respondents

APPEAL under Clause 15 of the Letters Patent against the order dated 23.2.2015 made in W.P.No.3145 of 2015.

Prayer in W.P.No. 3145 of 2015:

To issue a writ of mandamus to direct the respondents to stay the entire disputed outstanding demand of Rs.10 00 000 000/- pursuant to order dated 28.1.2015 for Assessment Year 2010-11.

For Appellant	:	Mr.R.Venkatararaman, SC for Mr.K.Harishankar
For Respondents	:	Mr.T.Pramod Kumar Chopda

Judgment was delivered by V.RAMASUBRAMANIAN,J

This appeal arises out of the dismissal of a writ petition filed by the appellant herein seeking a Mandamus to direct the Original and Appellate Authorities of the Department of Income Tax to stay the disputed outstanding demand of Rs.10 crores pursuant to an order dated 28.1.2015 passed under Section 220(6) of the Income Tax Act, 1961.

2. Heard Mr.R.Venkataraman, learned Senior Counsel for the appellant. Mr.T.Pramod Kumar Chopda, learned Standing Counsel takes notice for the respondents.

3. The assessment in the case of a company by name Henkel India Limited relating to the assessment year 2010-11 was completed under Section 143(3) read with Section 144C(3) on 28.5.2014. Certain disallowances were made on account of transfer pricing adjustments, loss on sale of assets and amortized claim of VRS. The assessee accepted the disallowances and did not file any appeal. Thereafter, penalty proceedings under Section 271(1)(c) were initiated and a demand of Rs.10 crores was made. The assessee moved an application for stay after filing the appeal. In the application under Section 220(6), the Assessing Officer passed a conditional order directing the appellant to pay Rs.1 Crore on or before 10.2.2015; Rs.2 Crores on or before 28.2.2015 and Rs.2 Crores on or before 20.3.2015. The appellant complied with the said conditional order. But, in the order under Section 220(6), the Assessing Officer also stated that if the appeal is not disposed of on or before 30.9.2015, the matter may be taken up for review.

4. Without challenging the order of the Assessing Officer dated 28.1.2015 by filing the statutory appeal, the appellant filed a writ petition in W.P.No.3145 of 2015 simply seeking a Writ of Mandamus to direct the respondents herein to stay the entire demand pursuant to

the order dated 28.1.2015. After pointing out that the appellant failed to challenge the conditional order by filing a statutory appeal and after pointing out that the discretion vested in the Assessing Officer was properly exercised in terms of Section 220(6), the learned Judge dismissed the writ petition by an order dated 23.2.2015. It is against the said order that the above appeal is filed.

5. Mr.R.Venkataraman, learned Senior Counsel appearing for the appellant submitted that though a statutory appeal has been filed against the order in the writ petition, his client has complied with the order of the Assessing Officer dated 28.1.2015. The learned Senior Counsel produced the challans issued by the State Bank of India in proof of having made payment of Rs.5 Crores as per the order dated 28.1.2015.

6. Today, the grievance of the appellant is confined only to one thing. Since the regular appeal is not yet disposed of and since by the order passed under Section 220(6), the Assessing Officer was likely to review the conditional order, the appellant apprehends that some more levy may be imposed.

7. The above grievance of the appellant could easily be redressed. As against the original assessment completed on 28.5.2014, the appellant did not go on appeal. They have accepted all the disallowances. Now, what is pending in appeal is only the question of penalty. The total penalty levied was Rs.10 Crores. Out of the said amount, a sum of Rs.5 Crores has already been deposited. Therefore, this is a fit case where the appellant is entitled to have stay till the disposal of the appeal. One more grievance of the appellant is about the adverse remarks made by the learned Judge in paragraph 15 of the order.

8. But, we do not think that these observations will really carry any weight in the disposal of the appeal by the Appellate Authority.

9. Hence, the writ appeal is disposed of with the following directions :

(i) The Appellate Authority shall grant the benefit of stay to the appellant till the disposal of the appeal and

(ii) While deciding the appeal, the Appellate Authority shall not go by the observations made either by this Court or by the learned Judge.

No costs. Consequently, the above MP is closed.

Sd/-
Assistant Registrar(Records)

//True Copy//

Sub Assistant Registrar

To

1.The Deputy Commissioner of Income Tax,
Large Tax Payer Unit-II, 1775,
Jawaharlal Nehru Inner Ring Road,
Anna Nagar, Western Extension,
Chennai-101.

2.The Joint Commissioner of Income Tax,
Large Tax Payer Unit-II, 1775,
Jawaharlal Nehru Inner Ring Road,
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3.The Commissioner of Income Tax,
Large Tax Payer Unit-II, 1775,
Jawaharlal Nehru Inner Ring Road,
Anna Nagar, Western Extension,
Chennai-101.

2 CCs to Mr.K.Harishankar, Advocate SR.No. 55084

1 CC to Mr.T.Pramod Kumar Chopda, Advocate SR.No. 55163

W.A.No.363 of 2015
and M.P.No.1 of 2015

SVI (CO)
PSI (13.10.2015)