IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.07.2015

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THE HONOURABLE MR.JUSTICE T.RAJA

W.P.No.19368 of 2015
And
M.P.No.1 of 2015

M/s.Winner Dairy (P) Ltd.,
Rep. by its Director,
Mr.K.Venkatraman ... Petitioner

Vs.

1. The Deputy Commissioner of Income Tax
   Pondicherry Circle Pondicherry

2. Commissioner of Income Tax (Appeals)
   Pondicherry ... Respondents

Prayer:
Writ petition filed under Article 226 of the Constitution of India praying for a Writ of Certiorarified Mandamus to call for the records of the first respondent in PAN : AAACW0573F dated 23.06.2015 relating to the application made by the petitioner for stay of demand under Section 220(6) of the Income Tax Act, 1961 and quash the order dated 23.06.2015 rejecting the stay petition and direct the first respondent to pass orders thereon to grant stay of demand relating to the assessment order for the Assessment year 2012-2013.

For Petitioner : Mr.T.V.Ramanujam
Senior Counsel
for M/s.S.Elambharathi

For Respondents : Mr.T.Pramod Kumar Chopda
Sr.Standing Counsel

ORDER

By consent, the writ petition is taken up for final disposal.

2.This writ petition has been filed by M/s.Winner Dairy (P) Limited seeking issuance of Certiorarified Mandamus to call for the records of the Deputy Commissioner of Income Tax, Pondicherry Circle Pondicherry, the first respondent herein in PAN : AAACWO573F dated 23.06.2015 relating to the application made by the petitioner for stay of demand under Section 220(6) of the Income Tax Act, 1961, to quash the same with further direction to the first respondent to pass appropriate orders.

3.Mr.T.V.Ramanujam, learned Senior Counsel appearing for the petitioner assailing the impugned order contended that the petitioner after receiving the assessment order dated 31.03.2015 with a demand to pay the tax mentioned therein has filed a statutory appeal before the second respondent, Commissioner of Income Tax (Appeals), Pondicherry within the time limit. Admittedly, the same is also pending disposal.

4.He would further submit that the petitioner has also filed a petition under Section 220(6) of the Income Tax Act, 1961 seeking stay of the demand of dispute of tax pursuant to the assessment order. As the first respondent is required to consider the stay petition and treat the petitioner as an assessee not in default by passing a speaking and reasoned order, till date when the appeal along with the stay application has not been taken up for consideration, they cannot pass the impugned order dated 23.06.2015. Hence, the approach adopted by the first respondent is totally running contrary to their own guidelines mentioned in Instruction No.1914, Mr.T.V.Ramanujam pleaded.

5.Relying heavily on the guidelines for grant of stay of demand, contained in the instruction no.1914 dated 02.12.1993, he would further submit that when the guidelines are very clear that if the demand in dispute has arisen because the assessing officer has adopted an interpretation of law in respect of which there exist conflicting decisions, if there is un-reasonable high pitched assessment order, then the assessing officer must come forward to consider the request for stay of the operation of the assessment order.

6.Adding further, he would submit that even the Central Board of Direct Tax in their Instruction no.96 dated 21.08.1969 has also made it clear that where the income determined on assessment was substantially higher than the returned income, say twice the latter amount or more, the collection of the tax in dispute should be held in abeyance till the decision on the appeal provided there were no lapses on the part of the assessees.

7.Concluding his argument, he would further submit that when the petitioner has been waiting for a fair decision on his pending appeal that has been filed within the stipulated time, it is not fair on the part of the respondent to mount un-due pressure on the petitioner to pay the entire amount that has been heavily disputed.

8.Per contra, Mr.T.Pramod Kumar Chopda, learned Senior Standing Counsel appearing for the respondents submitted that although the petitioner has moved stay application along with the appeal filed before the second respondent, he has not on his own come forward to offer any security to safeguard the interest of the revenue. Therefore, the first respondent has passed the order, hence, there is nothing wrong in supporting the impugned order.

9.This Court is not able to see any merits on the submission of the learned Senior Standing Counsel appearing for the respondents. Admittedly, in the present case having suffered an order of assessment in the hands of the first respondent, the petitioner has moved his appeal before the second respondent along with the stay application requesting the second respondent to grant stay of operation of the impugned assessment order passed by the first respondent only till the disposal of the pending appeal. When the clarification on instructions on stay of demand has been followed uniformly, taking the plea that accepting the instructions more particularly accepting the Instruction no.1914 dated 02.12.1993, this Court finds that there cannot be any embargo or impediment for the first respondent to consider the stay application filed by the petitioner on the basis of the guidelines given in Instruction no.1914 before taking any coersive steps while appeal is pending.

10.Therefore, this Court without going into the merits of the matter, as they will bear some effect on the pending stay application, hereby directs the second respondent to take up the stay application within a period of two weeks from the date of receipt of a copy of this order and pass appropriate orders on merits and in accordance with law particularly, with reference to the guidelines mentioned in Instruction no.1914. Till then, the first respondent shall not proceed on the basis of the impugned order. The second respondent will first consider the stay application and thereafter, shall consider the appeal in accordance with law on merits. The first respondent will not take any coercive steps till the disposal of the stay application.

11.The writ petition is disposed of accordingly. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

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To

1. The Deputy Commissioner of Income Tax
Pondicherry Circle Pondicherry

2. Commissioner of Income Tax (Appeals)
Pondicherry

+1cc to Mr.T.Pramod Kumar Chopda, Advocate, S.R.No.33155
+1cc to M/s.S.Elambharathi, Advocate, S.R.No.32775

W.P.No.19368 of 2015
And
M.P.No.1 of 2015

VSN(CO)
CA(01/09/2015)