IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.06.2015

CORAM:

THE HONOURABLE MR.JUSTICE R.SUDHAKAR
and
THE HONOURABLE Ms.JUSTICE K.B.K.VASUKI

Tax Case (Appeal) No.532 of 2015
& M.P.No.1 of 2015

M/s.IFMR Trust
IITM Research Park
A-1, 10th Floor
Kanagam Village, Taramani
Chennai - 600 113. .. Appellant /petitioner

versus

The Assistant Commissioner of Income Tax,
Business Circle - III,
Chennai - 600 034. .. Respondent /Respondent

PRAYER: Tax Case Appeal filed under Section 260A of the Income Tax Act, 1961 as against the order dated 29.05.2015 made in S.P.No.344/Mds/2015 in ITA No.847.Mds/2015 on the file of the Income Tax Appellate Tribunal 'A' Bench, against the order of the Commissioner of Income Tax (Appeals)-14 2nd Floor, Main Building, 121 M.G.Road, Nungambakkam, Chennai-34 dt.13.3.15 and made in ITA.No.63 CIT (A) 4/2013-14.

For Appellant : Mr.Arvind P.Datar, S.C.
for M/s.Sandeep Bagmar

For Respondent : Mr.Swaminathan
for Mr.J.Narayanasamy
Standing Counsel for Income Tax

J U D G M E N T

(Judgment of the Court was delivered by R.SUDHAKAR,J.)

This Tax Case (Appeal) is filed by the assessee as against the order of the Income Tax Appellate Tribunal dated 29.05.2015 made in S.P.No.344/Mds/2015 in ITA No.847.Mds/2015 dismissing the stay petition filed by the assessee raising the following substantial questions of law:

"1. Whether the Tribunal was correct in dismissing the stay petition when the order for previous assessment year 2009-10 is under challenge before the High Court in appeal and the same being admitted?

2. Whether the Tribunal was correct in dismissing the stay petition without considering the facts and circumstances of the case relevant to the AY 2010-11?

3. Whether the Tribunal was correct in dismissing the stay petition despite the finding of this Hon'ble Court in WP No.10064 of 2014 for the subject AY 2010-11 and in MP No.1 of 2014 in TCA No.765 of 2014 for AY 2009-10 that there is a prima facie?”

2. The assessee is a private trust engaged itself in micro finance. The assessee claimed expenditure for earning the income. However, the Assessing Officer disallowed the claim of the assessee on the ground that the assessee has not included any expenditure for the purpose of earning the income and completed the assessment under Section 143(3) of the Income Tax Act determining the total income of Rs.19,13,99,162 and raised a demand of Rs.9,12,96,850/-. The Assessing Officer also made an addition of Rs.22,16,82,729/-. Since there were mistakes apparent, the Assessing Officer passed a revised order under Section 154 of the Income Tax Act revising the income to the tune of Rs.12,21,36,715/- and the demand of tax to the tune of Rs.4,64,67,030/-.

3. Aggrieved by the said order of assessment, the assessee preferred an appeal before the Commissioner of Income Tax (Appeals). During the pendency of appeal before the Commissioner of Income Tax (Appeals), the appellant/assessee preferred a Writ Petition in W.P.No.10067 of 2014 before this Court seeking to stay the recovery of demand proceedings initiated against the assessee. This Court, by order dated 08.04.2014, granted an order of interim stay of collection of demand on condition that the petitioner shall pay a sum of Rs.1,20,00,000/- within a period of three months from the date of the order.

4. For better clarity, we extract below the relevant portion of the order of this Court:

“ 9. In the result, this Writ Petition is partly allowed and the impugned order, dated 20.03.2014, is modified to the effect that there shall be an order of interim stay of collection of demand till the disposal of appeal by the third respondent on condition that the petitioner shall pay a total sum of Rs.1,20,00,000/- (Rupees One Crore and Twenty Lakhs only) within a period of three months from today, failing which, the interim order shall stand automatically vacated. It is further directed that the first respondent shall dispose of the appeal, on merits and in accordance with law, as expeditiously as possible. Consequently, connected Miscellaneous Petition is closed. No costs.”

5. Thereafter, the Commissioner of Income Tax (Appeals) dismissed the appeal by order dated 13.3.2015 enhancing the income to Rs.12,97,94,421/- by relying on the order in respect of the assessee's own case for the assessment year 2009-10 and allowed 2% deduction. Aggrieved by the same, the assessee preferred an appeal before the Tribunal along with a stay petition seeking to stay the demand. The Tribunal by a miscellaneous order dated 29.5.2015 dismissed the stay petition holding that for the assessment year 2009-10, the Tribunal had already decided the issue and there is no reason to depart with such reasoning.

6. Aggrieved by the said order of the Tribunal, the appellant/assessee is before this Court raising the above-mentioned questions of law.

7. It appears that the Department had issued attachment notice under Section 226 (3) of the Income Tax Act dated 26.6.2015, which forced the learned Senior Counsel to vehemently argue for the grant of interlocutory order by relying upon the earlier order of this Court dated 15.9.2014 in M.P.No.1 of 2014 in T.C.(A)No.765 of 2015, wherein interim order was granted for the assessment year 2009-10.

8. Learned Senior Counsel appearing for the appellant/assessee submits that without issuing notice to the assessee, the Commissioner of Income Tax (Appeals) enhanced the income, which resulted in the increased tax liability. He further submits that the Tribunal failed to consider the decision rendered by this Court in respect of the assessee's own case for the assessment year 2009-2010, wherein an order of interim stay of demand was granted and the Department did not file any appeal as against the said interim order. Further, as per the directions of this Court in the Writ Petition, the assessee had paid a sum of Rs.1,20,00,000/-. The Tribunal did not consider the said payment and dismissed the stay petition.

9. Heard Mr.Arvind P.Datar, learned Senior Counsel appearing for the appellant and Mr.M.Swaminathan, learned Standing Counsel appearing for the respondent and perused the materials placed before this Court.

10. We find that in the giving effect to order dated 28.3.2015, consequent to the dismissal of the appeal by the Commissioner of Income Tax (Appeals) enhancing the income, the total tax due along with interest has been determined at Rs.5,09,32,479/- as against Rs.4,79,20,652/-, which was originally assessed. Therefore, the tax liability to the extent of Rs.30.00 lakhs has been demanded by virtue of the enhancement of income by the Commissioner of Income Tax (Appeals) without issuing notice to the assessee, which has to be necessarily stayed pending appeal. Further, as per the calculation of the Department, the assessee had paid a sum of Rs.1,40,26,301/- out of Rs.5,09,32,579 and there is a balance of Rs.3,69,06,280/-, of

which a sum of Rs.30.00 lakhs, as pointed out earlier, has to be stayed.

11. Taking note of the earlier order passed by this Court dated 15.9.2014 in M.P.No.1 of 2014 in T.C.(A)No.765 of 2014 in respect of assessment year 2009-10, wherein we have accepted the prima facie plea of the appellant, who is financing new business ventures, that the interest that is paid by the beneficiary of such venture is chargeable to tax at the hands of the assessee, there cannot be a denial of expenses, which the Department now denies. The order dated 15.9.2014 passed by this Court for the assessment year 2009-10 reads as follows:

> "2. The petitioner/assessee is a private trust established with a mission to primarily finance the rural segment and also to support entrepreneurs, promote innovative business opportunities in rural areas and earn income from such business ventures and they claim revenue expenditure in the proposed business ventures which was disallowed by the Assessing Officer on the ground that the beneficiary of such business venture can claim the benefit of such expenses.
>
> 3. In contrast, the contention of the petitioner/appellant is that the interest that is paid by the beneficiary of such venture is chargeable to tax at the hands of the assessee and hence, there cannot be two yardsticks for the investment made by the appellant - trust. Further more, out of tax amount of Rs.45,175,569 and interest of Rs.14,468,410, totalling to Rs.59,643,979/-, the assessee had paid a sum of Rs.27,158,484/-, which is nearly 45.53% of the total demand and there is a balance of Rs.32,485,495/-.
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> 4. Taking note of the above submission, we feel that prima facie case has been made out by the petitioner/appellant for grant of stay. Accordingly, there will be an order of interim stay insofar as recovery of the balance of tax and interest."

12. The same analogy will apply to the present assessment year, namely, 2010-2011. Hence, we are inclined to order interim stay of collection of demand in excess of 40% of Rs.4,79,20,652/-, which comes to nearly Rs.1.92 crores. Since the appellant/assessee had already paid a sum of Rs.1,40,26,301/- as per the order passed by the Department dated 28.03.2015 in terms of Section 154 of the Income Tax Act, the appellant is directed to pay a further sum of Rs.50.00 lakhs in three instalments, commencing from 31st July, 2015.

13. For the foregoing reasons, we pass the following order:

(i) On the questions of law raised, we are of the view that the Tribunal was not justified in dismissing the stay petition in the manner stated in its order dated 29.05.2015; Consequently, the order of the Tribunal dated 29.05.2015 is set aside;

(ii)the appellant shall make a payment of Rs.50,00,000/- (Rupees Fifty Lakhs only) in the following manner:

a) the appellant shall pay a sum of Rs.10,00,000/- (Rupees ten lakhs only) on or before 31.7.2015;

b) Rs.20,00,000/- (Rupees twenty lakhs only) on or before 31.8.2015 and

c) Rs.20,00,000/- (Rupees twenty lakhs only) on or before 30.9.2015

(iii) subject to such compliance, there shall be an order of interim stay of collection of balance amount demanded for the assessment year 2010-2011 and the respondent/Department is restrained from initiating recovery proceedings pending appeal before the Tribunal;

(iv) In case of default in payment of anyone of the above mentioned instalments, the Department will be entitled to recover the entire amount forthwith; and

(v) The attachment order/notice issued by the Department dated 26.6.2015 stands raised pending the appeal.

In the result, this Tax Case (Appeals) stands disposed of. No costs. Consequently, M.P.No.1 of 2015 is closed.

Sd/-
Assistant Registrar

True Copy

Sub Assistant Registrar

To

1. The Assistant Registrar,
Income Tax Appellate Tribunal, Madras 'A' Bench,
III Floor, Rajaji Bhavan, Nungambakkam, Chennai.

2. The Commissioner of Income Tax (Appeals), 14, Chennai.

3. The Assistant Commissioner of Income Tax, Business Circle - III, Chennai - 600 034.

+1 cc to M/s.M.Swaminathan, Advocate,Sr.32302.

+1 cc to Mr.Sandeep Bajmer, Advocate,SR.32527.

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krd 16/7

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