IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.07.2015

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

W.P.No.21450 of 2015
and
M.P.No.1 of 2015

M/s.The G.R.D.Trust
Kalaikadhir Buildings
963-Avinashi Road
Coimbatore-641 037
Rep. By its Managing Trustee
Dr.D.Padmanaban ... Petitioner

-Vs-

Deputy Commissioner of Income(Exemptions)
67A, Race Course Road
Coimbatore-641 018 ... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying to issue a writ of Certiorari calling for the records of the respondent in No.AAATT1480B/EC/CBE/2015-16dated 26.06.2015 and quash the same.

For petitioner : Mr.R.Krishnamurthy, Senior Counsel
for Mr.R.Subramanian

For respondent : Mr.T.Pramod Kumar Chopda
Sr.Standing Counsel for Income Tax Dept.

O R D E R

This Writ Petition is directed against the impugned notice dated 26.06.2015, by which, the respondent-Deputy Commissioner of Income Tax (Exemptions), Coimbatore, informed the petitioner to pay the outstanding amount to avoid coercive action, failing which recovery action will be initiated against the petitioner.

2. Mr.R.Krishnamurthy, learned Senior Counsel appearing for the petitioner submitted that when the petitioner has suffered an assessment order raising regular demand u/s.143(3) of the Income Tax Act, 1961 (hereinafter called as the “Act”) the petitioner-Trust immediately filed appeal before the Commissioner of Income Tax (Appeals) on 21.04.2015, challenging the correctness of the same along with Stay Application and further sent a letter 25.04.2015 to the Commissioner of Income Tax-I and its copy to the Assistant Commissioner of Income Tax (Exemptions) stating that the demand be stayed till the disposal of the appeal by the CIT(Appeals). Since the appeal along with Stay Application is pending before CIT(Appeals), the petitioner was under an impression that there would not be any coercive action from the respondent, but all of a sudden, the respondent issued the impugned notice dated 26.06.2015. According to the learned Senior Counsel for the petitioner, in view of the appeal pending before the Appellate Authority, the impugned recovery notice is not legally sustainable, for one good reason that in the event of succeeding in the pending appeal, the petitioner would be put to grave hardship, therefore, he prayed for a direction to the Appellate Authority viz., CIT(Appeals) to dispose of the pending appeal on merits as expeditiously as possible and till then, the impugned notice may be kept in abeyance.

3. Mr.Pramod Kumar Chopda, learned Senior Standing Counsel for the Department submitted that till the date of issue of impugned recovery notice, the petitioner has not brought to the notice of the Assessing Officer in respect of the appeal filed before the CIT (Appeals). He further pointed out that the petitioner ought to have moved stay application before the Assessing Officer and the petitioner has not chosen to do the same, therefore, the impugned order has been rightly passed, which requires no interference by this Court.

4. Heard the submissions made on either side and perused the affidavit filed in support of the Writ Petition.

5. The petitioner being aggrieved by the assessment order dated 31.03.2015 passed under Section 143(3) of the Income Tax Act, 1961, has filed an appeal under Section 246A of the Act along with stay application, therefore, the respondent has to treat the petitioner/assessee trust as not an assessee in default under Section 220(6) of the Act. Therefore, considering these facts and also in the light of Instruction No.1914 of 1993 dated 02.12.1993, wherein, guidelines for staying demand shows that on sufficient reasons, notice of demand to be kept in abeyance, this Court hereby directs

the respondent-Deputy Commissioner of Income (Exemptions) to keep the impugned notice dated 26.06.2015 in abeyance till the stay application or main appeal of the petitioner-Trust, is disposed of by the CIT(Appeals), whichever is later.

6. Accordingly, the Writ Petition is disposed of with the above directions. No costs. Consequently, connected M.P.No.1 of 2015 is closed.

Sd/-
Assistant Registrar(J)

//True Copy//

Sub Assistant Registrar

nvsri

To

The Deputy Commissioner of Income(Exemptions)
67A, Race Course Road
Coimbatore-641 018

+1cc to M/s.I.Abrar and Abdullah, Advocate, S.R.No.36026
+1cc to M/s.T.Pramod Kumar Chopda, Advocate, S.R.No.36000

W.P.No.21450 of 2015

MP(CO)
CA(03/09/2015)