In the High Court of Judicature at Madras

Dated : 29.9.2015

Coram :

The Honourable Mr.Justice V.RAMASUBRAMANIAN

and

The Honourable Mr.Justice T.MATHIVANAN

T.C.A.Nos.893 and 894 of 2015 and M.P.Nos.1,1,2,2 and 3 of 2015

M/s.Kalaignar TV Pvt.Ltd.,
Chennai-18. ...Appellant in both appeals/Applicant

Vs

The Deputy Commissioner of Income Tax
Non Corporate Circle-20, Chennai-34. ...Respondent in both appeals/Respondent

TAX CASE APPEALS under Section 260A of the Income Tax Act, 1961 against the common order dated 31.8.2015 made respectively in (i) S.P.No. 345/Mds/2015 in I.T.A.No.1245/(Mds)/2015 and (ii) S.P.No.346/Mds/2015 in I.T.A.No.1246/(Mds)/2015 on the file of the Income Tax Appellate Tribunal 'C' Bench, Chennai, for the assessment years 2009-10 and 2010-11 against the order of the Commissioner of Income Tax (Appeals)-14 2nd Floor Main Building No.121 M.G.Road, Nungambakkam, Chennai-34 dated 31/03/2015 in ITA.No.78 & 79 CIT(A)-14/2013-2014(old ITA Nos.55 & 59/14-15/A14) of the Assessment years 2009-2010 & 2010-2011.

against the order of the Deputy Commissioner of Income Tax Media Circle-1 Chennai-34 dated 28/03/2013 in PAN-AADCK0898E.

For Appellant : Mr.Arvind P.Datar, SC for Mr.S.Sendhamaraikannan
For Respondent : Mr.M.Swaminathan, Senior Standing Counsel

Common Judgment
(Judgment was delivered by V.RAMASUBRAMANIAN,J)

These appeals are by the same assessee questioning the correctness of the conditional order passed by the Income Tax Appellate Tribunal for the grant of a stay pending appeals.

2. Heard Mr.Arvind P.Datar, learned Senior Counsel appearing for the appellant/assessee and Mr.M.Swaminathan, learned Senior Standing Counsel for the respondent/Revenue.

3. As against the two independent orders of assessment, both dated 28.3.2013 relating respectively to the assessment years 2009-10 and 2010-11, imposing upon the appellant, a demand to the tune of Rs.9.28 Crores and Rs.81.39 Crores respectively, the appellant filed two statutory appeals before the Commissioner of Income Tax (Appeals). By a common order dated 31.3.2015, the Commissioner of Income Tax (Appeals) dismissed both the appeals.

4. As against the said common order, the appellant filed two independent appeals before the Income Tax Appellate Tribunal along with petitions for stay. On the petitions for stay, the Tribunal passed a common order dated 31.8.2015, directing the appellant to pay Rs.10 Crores on or before 15.9.2015. The Tribunal also directed the appellant to pay 10% of the collection including receivables from various heads, towards outstanding demand. This amount was directed to be paid once in a week. Certain other conditions were also imposed. Aggrieved by those conditions, the appellant has come up with the above appeals raising the following substantial questions of law :

> "(i) Whether the Tribunal erred in taking up the stay petition for hearing on merits, when the earlier decision on 29.5.2015 was to take up the main appeal itself for final hearing on 24.6.2015, which was then adjourned for only final hearing on 6.8.2015 and 27.8.2015 ?
>
> (ii) Whether the new Bench of the Income Tax Appellate Tribunal ought to have passed orders on merits in stay petition, when the Bench on the previous day adjourned the case to 8.10.2015 for final hearing and had posted the stay petition on 28.8.2015 only for formal orders, as orders in the stay petition could be heard only on Friday ?
>
> (iii) Whether the Tribunal was correct in granting conditional stay without considering the fact that the appellant has pleaded and established prima facie case, balance of convenience and genuine financial hardship ?
>
> (iv) Whether the Tribunal was correct in granting conditional stay upon payment of Rs.10 crores on or before 15.9.2015 for the assessment years 2009-2010 and 2010-11, when the appellant

has genuine financial difficulties and does not have liquid cash or assets to pay even fraction of the demand ? and

(v) Whether the Tribunal was correct in imposing unreasonable, onerous and impossible conditions in granting conditional stay, which is violative of Article 19(1)(g) of The Constitution and will lead to unnecessary harassment to the appellant ?"

5. A careful look at the questions of law raised by the appellant would show that all of them hinge only upon the questions of fact. But, the underlying issue is that the appellant has a grievance about the fairness of procedure adopted by the Tribunal in dealing with their petitions for stay. This is the only reason as to why we have chosen to entertain both the appeals.

6. In the memorandum of grounds of appeals, the appellant has chosen to narrate certain things that happened before the Tribunal, which had compelled them to raise the above questions of law. We do not wish to get into these factual details and pronounce a verdict, since the appeals are still pending before the Tribunal.

7. In the light of the grievance of the appellant that they did not have a fair opportunity, we only wish to remove that grievance of the appellant by disposing of these appeals with certain directions to the Tribunal. We make it clear that we are not recording any finding on the complaints made by the appellant in their grounds of appeals, but we wish to redress their grievance with regard to the procedure adopted.

8. The appeals are admittedly slated for hearing on 8.10.2015. There is a dispute as to whether the stay petitions or the appeals are to be taken up for final hearing on 8.10.2015. But, we are of the considered view that in the light of the grievances expressed by the appellant about the fairness of the procedure adopted by the Tribunal, it would be better to give the choice to the Tribunal to take up on 8.10.2015, depending upon the Tribunal's convenience, either the stay petitions or the main appeals and dispose either of the two within a period of two weeks.

9. Therefore, both the appeals are allowed, the common order of the Tribunal is set aside and the matters are remitted back to the Tribunal. We direct the Tribunal to take up either the stay petitions or the appeals on 8.10.2015. We leave the choice to the Tribunal and the Tribunal shall take up either of the two without reference to any of the observations contained in its previous order or in the order now passed by us. We direct the Tribunal to dispose of either the stay petitions or the main appeals by hearing them on 8.10.2015 and

9.10.2015. The learned counsel for the parties shall cooperate. The Tribunal shall endeavour to dispose of either the stay petitions or the main appeals within two weeks thereafter. No costs. Consequently, the above MPs are closed.

-s/d-
Assistant Registrar(CSIV)
dt:30/09/2015

True Copy

Sub-Assistant Registrar

To
1.The Assistant Registrar
III floor Rajaji Bhavan
The Income Tax Appellate Tribunal 'C' Bench,
Besant Nagar Chennai.

2.The Commissioner of Income Tax (Appeals)
2nd floor Main Building
NO.121 M.G.Road, Nungambakkam

3.The Deputy Commissioner
of Income-Tax Media Cirlce-1
Chennai-34.

+2 ccs to M/S.M.Swaminathan, Advocate sr.52640
+2 ccs to M/S.S.Senthamarai Kumaran Advcocate sr.52894,52895

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