IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.09.2015

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THE HONOURABLE MR.JUSTICE R.MAHADEVAN

W.P.No.28943 of 2015
and M.P.No.1 of 2015

M/s.Sumeru Soft P. Ltd. [Petitioner]
Rep. by its Director G.Rajagopalan
No.50, South Boag Road
T.Nagar, Chennai-600 017.

Vs

1 The Chief Commissioner
of Income Tax Chennai-4
Income Tax Department
121 Mahatma Gandhi Road
Chennai-600 034.

2 The Commissioner
of Income Tax Chennai-6
Income Tax Department
121 Mahatma Gandhi Road
Chennai-600 034

3 The Commissioner
of Income Tax (Appeals)-15
Income Tax Department
121 Mahatma Gandhi Road
Chennai-600 034

4 The Joint Commissioner
of Income Tax Corporate Ward-6
Income Tax Department
121 Mahatma Gandhi Road
Chennai-600 034

5 The Income Tax Officer
Corporate Ward-6(4)
Income Tax Department
121 Mahatma Gandhi Road
Chennai-600 034

[Respondents]

Petition filed under Article 226 of the Constitution of India to issue a Writ of certiorarified mandamus to call for the records of the 5th respondent to quash the impugned order in C.No./ C.W.6(4)/ Stay/2015-16 dated 24.08.2015 relating to the Assessment Year 2007-08 and consequently direct the first second fourth and fifth respondents not to proceed further in the matter of recovery of the disputed arrears pending disposal of the first appeal before the third respondent.

For Petitioner : Mr.S.Sridhar
For Respondents : Mr.T.Pramod Kumar Chopda, Sr.Standing Counsel

O R D E R

Heard the learned counsel for the petitioner and Mr.T.Pramod Kumar Chopda, learned Senior Standing Counsel, who took notice for the respondents and with their consent, the main writ petition is taken up for disposal.

2. The petitioner has come forward with this writ petition challenging the order of the 5th respondent dated 24.08.2015 relating to the Assessment Year 2007-08 and to direct the 1st, 2nd, 4th and 5th respondents not to proceed further in the matter of recovery of the disputed arrears pending disposal of the first appeal before the 3rd respondent.

3. The petitioner Company, which is engaged in the business of software development, is an assessee on the file of the 5th respondent. For the assessment year 2007-08, the return of income was filed on 30.10.2007, showing the taxable income at Rs.37,91,560/-, which was initially accepted u/s 143(1) of the Act. After re-opening the proceedings under Section 147 of the Act on the issuance of the notice under Section 148 of the Act dated 26.03.2014, the re-assessment under Section 143(3) read with 147 of the Act was framed on 31.03.2015 by the 5th respondent at a taxable total income of Rs.40,28,24,591/-. Aggrieved over the said order, the petitioner has preferred an appeal under Section 246A(1) of the Income Tax Act before the Commissioner of Income Tax (Appeals) on 10.04.2015. During the pendency of the said appeal, an application dated 29.05.2015 for stay was filed before the 5th respondent, which was rejected by order dated 24.08.2015. Hence, the petitioner is before this Court.

4. It is the contention of the learned counsel for the petitioner that pending disposal of the appeal, without recording proper reasons, the 5th respondent has rejected the stay application filed by the petitioner. It is his further contention that the further action pursued by the 5th respondent for recovery of the disputed arrears is unjustified, pending disposal of the appeal. Hence, the learned counsel for the petitioner sought to quash the proceedings of the 5th respondent dated 24.08.2015.

5. Admittedly, an appeal petition is pending before the appellate authority. The stay application filed before the assessing authority got rejected. Hence, in order to meet the ends of justice, the petitioner is directed to file a stay application before the territorial Commissioner, the 2nd respondent herein, within a week from the date of receipt of a copy of this order and on such filing, the same shall be considered and orders passed on merits and in accordance with law by the territorial Commissioner/2nd respondent, within a period of two weeks thereafter. It is made clear that till orders are passed in the stay application by the 2nd respondent, no recovery proceedings shall be initiated.

The writ petition is disposed of with the above directions. No costs. Connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

True Copy

Sub Assistant Registrar

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To
1 The Chief Commissioner
of Income Tax Chennai-4
Income Tax Department
121 Mahatma Gandhi Road
Chennai-600 034.

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Income Tax Department
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1 cc to Mr.S.Sridhar , Advocate Sr.No.50413
1 cc to Mr.T.Pramod Kumar Chopda, , Advocate Sr.No.50798

W.P.No.28943 of 2015

ggk(co)
pmk.6.10.2015