

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.10.2015

CORAM:

THE HON'BLE MR. JUSTICE R. MAHADEVAN

W.P.No.34225 of 2015
and M.P.Nos.1 & 2 of 2015

M/s.Lalitha Jewellery Mart Private Limited
Rep. by its Director P. Rajeswaran
No.123 Usman Road Panagal Park
T.Nagar Chennai-17.

... Petitioner

Vs

1. The Commissioner of Income Tax (Appeals)-8
O/o the Commissioner of Income Tax (Appeals)-8
Room No.222 Aayakar Bhavan Main Building
121 M.G.Road Nungambakkam
Chennai - 600 034.

2. The Deputy Commissioner of Income Tax
O/o the Deputy Commissioner of Income Tax
Company Circle-II (4) - Room No. 514
Wanaparthi Block 121 M.G.Road
Nungambakkam Chennai - 600 034.

.... Respondents

Writ Petition filed under Article 226 of the Constitution of India seeking a writ of certiorari to call for the records of the 1st respondent dated 01.09.2015 in I.T.A No.74/2013-14 and quash the same.

For petitioner : Mr.Muralikumaran for
McGAN Law Firm

For respondents : Mr.T.Pramodkumar Chopda, Sr.SC

ORDER

Heard Mr.Muralikumaran, learned counsel for the petitioner and learned Senior Standing Counsel, who took notice for the respondents and with their consent, the main writ petition itself is taken up for hearing.

2. This writ petition has been filed challenging the order of the 1st respondent dated 01.09.2015 in I.T.A No.74/2013-14.

3. The petitioner is a Company, registered under the Tamil Nadu Companies Act, 1956 and an assessee on the file of the 2nd respondent. The 2nd respondent passed an assessment order for the assessment year 2007-08 on 31.12.2009, wherein it is intimated that proceedings would be initiated separately with respect to penalty under Section 271(1)(c) of the Act. As against the said order of the 2nd respondent, the petitioner preferred an appeal before the Commissioner of Income Tax (Appeal)-III, Chennai in I.T.A.No.598/09-10/A-III and on 08.09.2010, an order was passed fully allowing an issue, partly allowing an issue and dismissing other issues raised in the appeal. Aggrieved over the said rejection of the contentions on certain issues, the petitioner preferred an appeal before the Income Tax Appellate Tribunal in I.T.A.No.1871(Mds)/2010 and the Tribunal by order dated 15.04.2013 dismissed the appeal and allowed the cross appeal preferred by the Revenue in I.T.A.No.2180(Mds)/2010. Being aggrieved over the said order passed in the above said appeals, the petitioner preferred two tax case appeals in T.C.A.Nos.435 and 436 of 2013 before this Court, one as against the dismissal of the appeal preferred by the petitioner and another against the allowing of appeal preferred by the Department. This Court, by order dated 25.02.2014 while admitting the appeals has also granted an order of interim stay. In the meantime, the 2nd respondent issued a notice dated 30.10.2013, to show cause as to why penalty under Section 271(1)(c) should not be levied in continuation of the assessment order passed earlier, for which, the petitioner submitted their reply on 31.10.2013. However, without considering any of the objections raised by the petitioner, the 2nd respondent levied penalty vide order dated 31.10.2013. Hence, the petitioner was constrained to file an appeal before the 1st respondent in ITA.No.74/2013-14 and also made a representation dated 06.07.2015 along with a stay application to the 1st respondent to keep in abeyance the said tax case appeal on the ground that this Court has already admitted the tax case appeals filed by the petitioner and also granted stay. After filing of the stay application, as requested by the department, the copies of orders were furnished to the 1st respondent. Thereafter, the 2nd respondent fixed the hearings on 22.07.2015 and thereafter on 18.08.2015. On both the dates, the representative of the petitioner Company argued the stay application. When the petitioner Company is expecting orders on

stay application, the 1st respondent has passed final orders in I.T.A.No.74/2013-14 on 01.09.2015. Hence, the petitioner is before this Court.

4. The learned counsel for the petitioner would submit that the impugned order passed by the 1st respondent is violative of the principles of natural justice. It is the submission of the learned counsel for the petitioner that when the assessment order itself is the subject matter in the appeals pending before the Hon'ble Division Bench of this Court, the 1st respondent is erred in taking up the appeal arising out of the order passed in the consequential penalty proceedings and deciding the same. That apart, according to him, when this Court has granted stay, after admitting the appeals arising out of the assessment order, before the same attains finality, passing orders in the consequential penalty proceedings is not only violative of the provisions of the Income Tax Act, but also illegal. Besides, the learned counsel for the petitioner would submit that the 1st respondent is erred in not considering the application taken out by the petitioner to keep in abeyance all further proceedings in the appeal. Hence, the learned counsel for the petitioner prays for allowing of the writ petition.

5. The learned Senior Standing Counsel appearing for the department has placed arguments in support of the impugned proceedings.

6. This Court considered the submissions made by the learned counsel on either side and perused the materials available on record.

7. Despite the fact that the above referred Tax Case Appeals are pending before the Hon'ble Division Bench of this Court, in which, an order of interim stay of collection of tax and interest and recovery of disputed arrears of Rs.3,87,73,321/- was ordered, since the petitioner/appellant has already remitted a sum of Rs.4 crores after fling of the tax case appeals, when the stay application was placed before the appellate authority with regard to imposition of penalty also intimating the pendency of the tax case appeals before the Hon'ble Division Bench of this Court, without passing any order on the stay application, using his discretionary power, the 1st respondent/appellate authority, has passed orders in the main appeal itself, which is questioned in this writ petition. Since as against the said order of the 1st respondent, there is an

alternative remedy available to the petitioner before the Income Tax Appellate Tribunal and without exhausting the same, the petitioner has come before this Court, this Court is inclined to pass the following order:-

"The petitioner is directed to file an appeal before the Income Tax Appellate Tribunal along with a stay application, within a period of two weeks from the date of receipt of a copy of this order and on such filing, the same shall be entertained by the Appellate Tribunal, without raising any issues with regard to limitation. It is made clear that pending disposal of the stay application, there shall not be any recovery".

The writ petition is disposed of in the above terms. No costs. Connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

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To

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Nungambakkam Chennai - 600 034.

+1cc to Mr.McGAN Law Firm, Advocate, S.R.No.58907

+1cc to Mr.T.Pramodkumar Chopda, Advocate, S.R.No.58407

W.P.No.34225 of 2015

CTK(CO)

CA(17/11/2015)