IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.12.2015

CORAM:

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

W.P.Nos.39394 and 39395 of 2015
and
M.P.Nos.1, 1, 2, 2, 3 and 3 of 2015

M/s.Refex Refrigerants Ltd.
rep. by its Managing Director
Anil Jain ... Petitioner in both WPs

Vs

1. The Deputy Commissioner of Income Tax
   Company Circle V (3)
   Office of the Deputy Commissioner of Income Tax,
   Room No.407, Main Building,
   "Ayakar Bhavan"
   No.121, M.G.Road, Nungambakkam,
   Chennai 600 034.

2. The Commissioner of Income Tax (Appeals) – V
   Office of the Commissioner of Income Tax (Appeals)
   "Ayakar Bhavan"
   No.121, M.G.Road, Nungambakkam,
   Chennai 600 034.

3. The Principal Commissioner of Income Tax – V
   Office of the Principal Commissioner of Income Tax
   "Ayakar Bhavan", Wanaparthy Block, 5th Floor,
   No.121, M.G.Road, Nungambakkam,
   Chennai 600 034. ... Respondents 1 to 3 in both Wps

4. ICICI Bank Limited,
   rep. by its Branch Manager,
   No.40, Bazullah Road,
   T.Nagar, Chennai 600 017. ... 4th Respondent in WP.39394/2015

Honkong Shangai Banking Corpn.,
rep. by its Branch Manager,
No.96, Dr. Radhakrishnan Salai,
Mylapore, Chennai 600 004. ... 4th Respondent in WP.39395/2015

Writ petitions have been filed under Article 226 of the Constitution of India for the issuance of writ of certiorari to call for the records of the third respondent dated 19.11.2015 in C.No.23(1)/ PCIT-5/CR-5/2015-16 and the consequential attachment made by the first respondent dated 10.12.2015 in PAN/GIR - AACCR2495P attaching the bank account of the petitioner company in Account Nos.602605053837 and 042629279001 with the fourth respondent bank and quash the same.

For Petitioner : Mr.N.Muralikumaran for M/s.Mcgan Law Firm

For Respondents : Mr.T.Promodkumar Chopda

COMMON ORDER

By consent, both the writ petitions are taken up for final disposal.

2.The petitioner has filed the present writ petitions, challenging the order of rejection of stay petition filed by the petitioner by the third respondent and consequential attachment made by the first respondent, attaching the bank accounts of the petitioner lying with the fourth respondent bank.

3.According to the petitioner, the petitioner is a registered company under the Companies Act, 1956 and is in the business of refilling and processing refrigerant gases. During the course of such business, the petitioner had transactions with the Companies at Singapore for purchase of stakes. However, due to financial fluctuations, the entire stakes could not be purchased as programmed and the petitioner suffered loss to the tune of Rs.19,53,43,146/-. Thereafter, the petitioner filed its returns for the assessment year 2011-12. On Scrutinising the same, the first respondent passed the assessment order dated 21.03.2014 for the year in question, disallowing the loss and depreciation claimed by the petitioner and accordingly assessed the total income and tax payable thereon. Aggrieved against the same, the petitioner preferred an appeal, which was entertained, but no stay order was granted by the second respondent. Since the first respondent refused to grant stay, the petitioner moved an application for stay of collection of demand before the third respondent, who by order dated 19.11.2015 rejected the same and also directed the first respondent to enforce the demand against the petitioner. Pursuant to the same, the first respondent attached the bank accounts of the petitioner. Hence, the petitioner is before this court.

4.The learned counsel for the petitioner submitted that the impugned order of the third respondent rejecting the stay petition filed by the petitioner is a non-speaking order and is violative of the principles of natural justice. Further, the learned counsel for the petitioner submitted that the consequential attachment of the bank accounts of the petitioner resulted in paralyzing the entire business activities of the petitioner, due to which, irreparable loss and prejudice caused to the petitioner.

5.The learned standing counsel for the respondents, on instructions, submitted that though the third respondent passed the impugned order, rejecting the petitioner's application seeking stay of collection of demand and directing the first respondent to effect the demand made against the petitioner, no recovery proceedings is initiated till date.

6.I have considered the rival contentions made on both sides and perused the materials available on record.

7.Admittedly, the third respondent, without adducing any reason, passed the impugned order, rejecting the stay petition filed by the petitioner. The submission of the learned counsel for the petitioner that the action of the first respondent, attaching the bank accounts of the petitioner led to paralyze the business activities of the petitioner, has considerable force. Further, the learned counsel for the petitioner, during the course of argument, brought to the notice of this court to the communication dated 16.03.2015 issued by the Joint Commissioner of Income Tax, wherein, it is stated that the authority concerned on an earlier occasion, offered an opportunity to the petitioner to pay at least 20% of demand or to pay the demand through installments, but the petitioner was not able to avail that opportunity. However, as represented by the learned standing counsel for the respondents, no recovery is made as on date.

8.Thus, considering the above stated facts, this Court is inclined to pass orders in the following terms:

(i)The petitioner is directed to pay 30% of the demand made by the authority concerned;

(ii)Since the bank accounts of the petitioner are attached, the authority concerned is permitted to realise 30% of the demand and directed to raise the attachment forthwith made on the bank accounts of the petitioner;

(iii)The second respondent Appellate Authority is directed to dispose of the appeal filed by the petitioner on merits and in accordance with law, after affording due opportunity of personal hearing to the petitioner as expeditiously as possible.

(iv)Upon realisation of 30% demand as stated above, no further recovery shall be made till the disposal of the appeal by the second respondent.

9.Both the writ petitions are disposed of accordingly. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

rk

To

1. The Deputy Commissioner of Income Tax
Company Circle V (3),
Office of the Deputy Commissioner of Income Tax,
Room No.407, Main Building,
"Ayakar Bhavan", No.121, M.G.Road, Nungambakkam, Chennai -34.

2. The Commissioner of Income Tax (Appeals) - V
   Office of the Commissioner of Income Tax (Appeals)
   "Ayakar Bhavan", No.121, M.G.Road, Nungambakkam, Chennai -34.

3. The Principal Commissioner of Income Tax - V
   Office of the Principal Commissioner of Income Tax
   "Ayakar Bhavan", Wanaparthy Block, 5th Floor,
   No.121, M.G.Road, Nungambakkam, Chennai 600 034.

+2cc's to M/s.Mcgan Law Firm, Advocate, S.R.No.68000
+1cc to Mr.T.Promodkumar Chopda, Advocate, S.R.No.68040

W.P.Nos.39394 and 39395 of 2015

(CO)
CA(22/12/2015)