BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED :25.09.2015

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THE HONOURABLE MR.JUSTICE R.SUBBIAH

W.P(MD).No.12875 of 2015
and
M.P(MD)Nos.1 and 2 of 2015

A.Hariharan ...Petitioner

Vs.

1.The Commissioner of Income Tax(Appeals),
Madurai.

2.The Commissioner of Income Tax,
Madurai.

3.The Joint Commissioner of Income Tax,
Tuticorin.

4.The Deputy Commissioner of Income Tax,
Tuticorin.

5.The Income Tax Officer,
Ward I, Tuticorin. ...Respondents

Prayer : This Writ Petition has been filed under Article 226 of the Constitution of India praying for a Writ of Mandamus forbearing the respondents from insisting to pay the tax amount demanded in the impugned demand notice, dated 03.06.2015 until the disposal of the appeal pending before the first respondent.

For petitioner : Mr.S.M.S.Johnny Basha

For R-1 & R-2 : Mr.R.Krishnamoorthy

ORDER

The Writ Petition has been filed praying for a Writ of Mandamus forbearing the respondents from insisting to pay the tax amount demanded in the impugned demand notice, dated 03.06.2015 until the disposal of the appeal pending before the first respondent.

2. In the affidavit it has been averred that the petitioner is engaged in the business of logistics and he is the Proprietor of M/s.Hari Logistics and he is an assessee as an individual and M/s.Hari Logistics is assessed to tax separately. The petitioner filed return of income for the assessment year 2012-2013 on 06.12.2012 admitting a total income of Rs.78,86,740/-. The return was taken up for scrutiny under

"CASS" and the Deputy Commissioner of Income Tax, Central Circle-I, Madurai had issued a notice under Section 143(2) on 24.09.2013 and personal hearing was given to the petitioner and after hearing the petitioner, the fifth respondent has passed an order, dated 31.03.2015. In the said order, the respondent has disallowed the payments to the tune of Rs.9,74,03,552/- made as "taxes and duties" payable under section 40 (a)(ia) of the Act and further disallowed Rs.6,54,144/- under Section 43B and Rs.10,50,979/- under depreciation. Therefore, the total disallowance is to the tune of Rs.9,91,08,675/- and tax liability along with interest under Section 234B is to the tune of Rs.4,25,42,870/-. Aggrieved over the assessment order passed under Section 143(3) of the Income Tax Act, the petitioner preferred an appeal before the first respondent under Section 246A of the Act. The petitioner has also filed a stay petition in that appeal. While the appeal is pending and the adjudicatory process is yet to be completed, the fifth respondent has issued the impugned demand notice, dated 03.06.2015 demanding to pay 50% of the demanded tax. Since the petitioner has a statutory right under the Income Tax Act to exhaust all the adjudicatory avenues prescribed under the Act, until the completion of proceeding under the Act, the petitioner cannot be forced to pay a huge amount while considering the stay petition. For that, the petitioner sent a letter to the third respondent, dated 19.06.2015 requesting to stay the demand of tax until the disposal of the appeal. However, the fourth respondent is demanding the huge amount of Rs.2,12,71,435/- being 50% of the demanded tax in order to consider the stay application. The petitioner is not in a position to pay 50% of the demanded tax amount. Hence, the petitioner has filed the present Writ petition for the above stated relief.

3. This Court vide order dated 27.07.2015 granted stay in M.P(MD)No.1 of 2015. The respondents have also filed M.P(MD)No.2 of 2015 to vacate the said interim order stating that the petitioner was asked to pay Rs.2,12,71435/- being 50% of the demand in the light of Board's Instruction No.1914, dated 02.12.1993 and Instruction in F.No.404/100/2009-ITTCC, dated 01.12.2009. Further, the petitioner has not exhausted all the legal remedies available to him in the Department and he has not put forth any valid reason for non-payment of tax or to grant of collection of demand.

4. When the matter is taken up for consideration, the learned counsel for the petitioner submitted that the petitioner is not in a position to pay the huge amount of Rs.2,12,71,435/- and the act of the respondents is scuttling the petitioner's statutory right of appeal and therefore, the respondents should be restrained from making a demand of tax amount until the disposal of the appeal.

5. Heard the learned counsel appearing for the petitioner and the learned counsel appearing for the respondents 1 and 2 and perused the materials available on record.

6. Considering the submissions made on either side, this Court is constrained to pass the following order:

Without going into the merits of the averment made in the Writ Petition, this Court directs the petitioner to pay a sum of

Rs.50,00,000/- with the respondents within a period of four weeks from the date of receipt of a copy of this order and on such payment, respondents are directed to dispose of the appeal filed by the petitioner on merits and in accordance with law by affording an opportunity of hearing to the petitioner, within a period of four weeks thereafter.

With the above direction, the Writ Petition is disposed of. No Costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar (CO)

/True Copy/

Sub Assistant Registrar

pm

To

1.The Commissioner of Income Tax(Appeals),
Madurai.

2.The Commissioner of Income Tax,
Madurai.

3.The Joint Commissioner of Income Tax,
Tuticorin.

4.The Deputy Commissioner of Income Tax,
Tuticorin.

5.The Income Tax Officer,
Ward I, Tuticorin.

+1CC to Mr.R.Krishnamoorthy Advocate Sr.No.56810

+1CC to S.M.S.Johnny Basha Advocate Sr.No.56849

GJM/SKS/RR/12.10.15-2P-8C

W.P(MD).No.12875 of 2015
25.09.2015