

iiifTHE HON'BLE SRI JUSTICE DILIP B.BHOSALE

AND

THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

WRIT PETITION No.40078 of 2014

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P.C.: (per the Hon'ble Sri Justice Dilip B.Bhosale) -

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This writ petition impugns the order, dated 20.10.2014, passed by the Assistant Commissioner of Income Tax, Circle - 16(2), Hyderabad, disposing of the stay application filed by the petitioner-assessee, dated 08.10.2014 under Section 220 (6) of the Income Tax Act (for short 'the Act'). By this application, the petitioner prayed for stay against the collection of demand of Rs.1441,71,23,690/- till disposal of the appeal filed by them before the C.I.T. (Appeals)-V, Hyderabad.

It appears, the assessment order, dated 24.09.2014, determined the total income of Rs.3248,95,43,717/- after making various additions and disallowances and raised the demand of Rs.1441,71,23,690/-. This order (24.09.2014) was challenged by the petitioner in appeal before the C.I.T. (Appeals) and till disposal of the appeal, the aforementioned application was filed before the Assessing Officer for keeping the tax in arrears in abeyance. The Assessing Officer rejected the application and directed the petitioner to pay the outstanding amount immediately before the same falls due.

We have heard Mr.A.V.Krishna Kaundinya, learned

Senior Counsel for the petitioner. The only contention urged by the learned Senior Counsel for the petitioner was that the Assessing Officer did not apply his mind independently and recorded reasons for rejecting the application filed by the petitioner under Section 220 (6) of the Act. He submitted that under the provisions of Section 220 (6) of the Act, the Assessing Officer has a discretion, which he is expected to exercise judiciously, and then, subject to such conditions as he may think fit to impose in the circumstances of the case, treat the assessee as not being in default in respect of the amount in dispute in the appeal, even though the time for payment has expired, as long as such appeal remains un-disposed. In the impugned order, he submitted, the Assessing Officer ought to have considered to impose conditions and the order rejecting the application outright is wrong and unsustainable. In support of his contention, he invited our attention to the Board Circular issued by the Central Board of Direct Taxes (C.B.D.T.) laying down guidelines for staying demand, such as made in the present case.

On last occasion, after hearing learned Senior Counsel for the petitioner for some time, we had directed him to take instructions from the petitioner whether they are prepared to deposit 25% of the total demand made in the assessment order and furnish bank guarantee for another 25%. Today, learned Senior Counsel for the petitioner submits that the petitioner is not prepared to either deposit or furnish bank guarantee and he has instructions to argue this writ petition on merits. In this

backdrop, the aforementioned contentions were urged by learned Senior Counsel for the petitioner.

On the other hand, learned Counsel for the Revenue invited our attention to the order of the Assessing Officer and submitted that the Assessing Officer after taking into consideration the additions made in the assessment order rejected the application for stay holding that the assessee's case does not fall under any of the guidelines for grant of stay of demand issued by the C.B.D.T. *vide* Instruction No.1914, dated 02.12.1993 i.e. the very same Circular, which learned Senior Counsel for the petitioner also relied upon.

We have perused Instruction No.1914, dated 02.12.1993 on which both learned counsel for the parties placed reliance upon. It provides that a demand should be stayed only if there are valid reasons for doing so. Mere filing an appeal against the assessment order would not be sufficient reason to stay the recovery of demand. It further states that even if the Assessing Officer is inclined to grant stay, he should impose such conditions as he may think fit. Thus, the Assessing Officer may require the assessee to offer suitable security to safeguard the interest of the Revenue; require the assessee to pay towards the disputed taxes reasonable amount in lumpsum or in instalments; require an undertaking from the assessee that he will cooperate in the early disposal of appeal failing which the stay order would be cancelled; reserve the right to review the order passed after expiry of reasonable period, so

up to 6 months, or if the assessee has not cooperated in the early disposal of appeal, or where a subsequent pronouncement by a higher appellate authority or Court alters the above situations; and reserve a right to adjust refunds arising, if any against the demand. These are the relevant guidelines we are concerned with, in view of the contentions urged by the learned counsel for the parties.

We have perused the impugned order, dated 20.10.2014 and we find that the Assessing Officer has made detailed reference to the additions made in the assessment order, which was challenged in the appeal before the C.I.T. (Appeals). We have also perused the additions. The additions are made under the following heads:

- (a) Loans received during the year which are not part of regular books of Account;
- (b) Interest disallowance under Section 40(a)(ia);
- (c) Disallowance of Franchise fee paid for IPL (Inclusive of Service Tax;
- (d) Stake money for Owning Race Horses;
- (e) Unaccounted investments and payments;
- (f) Unexplained source of repayment of loans;
- (g) Sources of investments in fixed deposit;
- (h) Investments in mutual funds; and
- (i) Setting of loss pertaining to amalgamated concerns.

Under every head, the Assessing Officer has also stated why those additions were made. The reasons in respect of the first addition under the head "loans received during the year which are not part of regular books of account" read thus:

"As per the Annexure-4A and Annexure-5A of

Special Audit Report, the Special Auditor arrived at local loans received by the assessee-company during the F.Y. 2010-11 is Rs.1,765/- crores. The assessee has failed to establish that these loans are genuine and clearly such loans have not taken part of the regular books of account and purpose of utilization of such loans are only to siphon off funds or divert the precious money from the Public Sector Banks and from other Financial Institutions the activities of the assessee are completely unaccounted and cannot be allowed as part of his business. Such sum received in whatever form has to be taxed in the hands of the recipient should be treated as his income and to be taxed to an extent of last penny receipt. The assessee has not utilized the loans for the purpose of business and has also not furnished any details about these transactions. Therefore, the entire amount of fresh loans received by the assessee not made part of the regular books of account, are added to the total income for the A.Y. 2011-2012, Rs.1,765/- crores.

As the addition is based on the facts available as per the assessment record, this addition would also likely be sustained in the further appellate proceedings.”

Having considered the additions and the reasons for making those additions reflected in the impugned order, we are not in agreement with the learned Senior Counsel for the petitioner that the Assessing Officer has not applied his mind independently and recorded reasons for rejecting the application for stay filed by the petitioner under Section 220 (6) of the Act.

In the circumstances, we do not find any merit in the contention urged on behalf of the assessee. However, having regard to the totality of the circumstances and the amounts involved, we are inclined to modify the order as follows:

“Pending the hearing and final disposal of the appeal before the C.I.T. (Appeals), we direct the Assessing Officer to treat the assessee as not being in default in respect of the amount in dispute in appeal, subject to petitioner-assessee depositing 25% of the total demand and furnishing a Bank Guarantee of any Nationalised Bank for another 25% of the total demand on or before 10.04.2015. On compliance, being made by the assessee of the above conditions, the C.I.T. (Appeals) shall deal with the appeal on merits in accordance with law.”

Writ petition is accordingly partly allowed.

Consequently, miscellaneous petitions, if any, also stand disposed of.

DILIP

B.BHOSALE,J

A.RAMALINGESWARA

RAO,J

Dt:04.03.2015
kdl

