IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 01.07.2016

Coram

The Hon'ble Mr.Justice T.S.Sivagnanam

Writ Petition No.18336 of 2016 and
W.M.P.No.16043 of 2016

M/s. International Institute of Bio Technology & Toxicology
rep. by its President Cum Secretary
Sri Arun Rajkumar Fredrick, S/o. S.J. Fredrick
Padappai - 601301
Kancheepurm District, Tamil Nadu India. ...Petitioner

Vs

1. The Deputy Commissioner of Income Tax (Exemptions)
   Chennai Circle,
   Annexe Building, III Floor,
   121, Mahatma Gandhi Road,
   Chennai- 600 034.

2. The Commissioner of Income Tax (Appeals)
   121, Mahatma Gandhi Road,
   Chennai- 600 034. ...Respondents

Writ Petition filed under Article 226 of the Constitution of India, for issuance of Writ of Certiorarified Mandamus to call for records in PAN AAATF0061E/2016-17, dated 10.05.2016, relating to the assessment year 2013-14, on the file of the first respondent, and to quash the same, and further, to forbear the first respondent from initiating or continuing with any proceedings for recovery of the disputed demand pursuant to the order of assessment in P.A.No.G.I.R.No.AAATF0061E, dated 30.03.2016, relating to the assessment year 2013-14, passed by the first respondent.

For Petitioner : Mrs.Dr.Anitha Sumanth
For Respondents : Mr.J.Narayanaswamy

O R D E R

Heard Dr.Anitha Sumanth, learned counsel appearing for the petitioner and Mr.J.Narayanaswamy, learned counsel appearing for respondents.

2. The petitioner has filed this Writ Petition, challenging the order, dated 10.05.2016, passed by the first respondent, whereby, the request made by the petitioner, for grant of absolute stay of the recovery proceedings, pending disposal of the Appeal Petition before the Commissioner of Income Tax (Appeals) filed against the assessment order, for the year 2013-14, was not granted, rather, a condition was imposed on the petitioner, requiring the petitioner to pay 15% of the demand of Rs.78,90,583,/- and to submit a copy of the challan to the first respondent.

3. I am reminiscent of the fact that, in respect of the same assessee, for the assessment year, 2012-13, similar orders were passed by the Assessing Officer, on 10.06.2015 which was challenged by the assessee/petitioner in W.P.No.17949 of 2015, and by order, dated 14.06.2016, the said Writ Petition was disposed of by me, and the operative portion of the order, dated 14.06.2016, reads as follows:- reminiscent

> 2. The petitioner has challenged the order passed by the first respondent dated 10.06.2015 whereby the request made by the petitioner for the grant of absolute stay on the recovery proceedings pending disposal of the appeal before the Commissioner of Income Tax (Appeals) filed against the order of assessment dated 31.03.2015 for the Assessment Year 2012-13 was not granted, but a condition has been imposed by the first respondent that the petitioner has to pay 50% of the demand immediately on receipt of the impugned communication.
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> 3. After elaborately hearing the parties and carefully perusing the materials on record, this Court is of the view that the only issue which needs to be considered is as to whether the exercise of discretion on the part of the first respondent is proper and does the impugned order call for interference? The core issue involved in the matter is as to whether the petitioner is entitled for the grant of exemption under Section 10(21) of the Income Tax Act.
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> 4. The case of the petitioner is that in respect of the earlier assessment orders, especially in respect of the Assessment Years 1997-98, 1998-99 and 2000-01, the petitioner's case has been considered by the Income Tax Appellate Tribunal and the Tribunal held that the petitioner is entitled for exemption under Section 10(21) of the Act. At this stage it would be useful to refer to one such order passed

by the Income Tax Appellate Tribunal dated 26.05.2006 for the Assessment Years 1997-98:

> "The denial of exemption by the Assessing Officer is based on the fact that the Assessee is classified as an Institution. It is the case of the Department that the Assessee-society is classified as an insitution and not as an Association and as per the provisions of Section 10(21) of the Act, exemption is available only to an Association. But once the fact that the Assessee – Society is engaged in research work regarding agriculture related activities and it is recognized as a leading National Body in the field of Research in Bio-Technology and Toxicology. Further, the Central Board of Direct Taxes has classified the Assessee-Society as an Association in the year 1997, after due verification of the object as well as its activities and there is no change in the objectives of the Assessee-society from its inception till date. In view of the these facts and circumstances of the case and respectfully following the Tribunal's decision cited supra, we hold that the Assessee is entitled to exemption under Section 10(21) of the Act as the Assessee society is engaged in research work in agriculture related activities.
>
> 9. In the result, the appeal of the Assessee is allowed."

Similar orders have been passed for the other two years as well. The petitioner had placed these orders for the consideration while finalizing the assessment before the Assessing Officer himself. However, the Assessing Officer, while passing the Assessment Order dated 31.03.2015, in paragraph 3.4 therein, has stated that as against the decisions of the Tribunal for the Assessment years 1997-98 & 1998-99, appeals have been filed under Section 260A of the Act before this Court. According to the petitioner, despite diligent effort being taken by them, they were unable to get the details as regards the pendency of such appeal. Therefore left with no other option, the counsel for the petitioner addressed a letter dated 08.06.2015 enclosing a letter of the petitioner dated 04.06.2015 requesting for details with regard to the said appeals said to have been filed by the Department. However, it appears that the petitioner has not been favoured with any reply till date. Be that as it may, the first respondent, while considering an application under Section 220(2) of the Act, has to consider as to whether the petitioner has made out a prima facie case for the grant of absolute stay.

5. Undoubtedly, the first respondent has power to exercise his discretion. Nevertheless, such discretion should be exercised in a proper manner and should contain reasons. In the instant case, the petitioner has been able to establish that in respect of previous years, the core issue which has been raised by the petitioner before the first respondent and subject matter of the previous Assessment Years, is regard to the exemption under Section 10(21) of the Act. The other two pertain to rejection of claim of depreciation on fixed assets and rejection of charitable status on application of provisions of Section 2(15) of the Act.

6. The learned counsel for the petitioner would submit that if the issue relating to Exemption under Section 10(21) of the Act is decided in favour the petitioner/assessee, then the other two issues would have to be held in favour of the petitioner. However, for this submissions, learned standing counsel for the respondent Department has certain reservations and would submit that this Court is not testing the correctness of the assessment order and what is being tested is correctness of the order passed by the first respondent in the stay petition filed by the petitioner.

7. It is true that this Court is not considering the correctness of the Assessment Order dated 31.03.2015. Therefore, this Court refrains from making any observation touching upon the merits of the Assessment order. Nevertheless, this Court is convinced that the petitioner has made out a good prima facie case supported by three orders passed by the Income Tax Appellate Tribunal for the earlier years and as of now, there is nothing on record to show that the decision of the Income Tax Appellate Tribunal has been either reversed or modified or

stayed by this Court in an appeal filed by the Department before this Court. That apart, when this Court entertained the writ petition, has passed a speaking order on 23.06.2015, granting an order of interim stay.

8. Taking into consideration, the above facts and circumstances of the case, this Court is of the view that the recovery proceedings shall remain stayed till the appeals are heard and disposed of by the second respondent.

With the above observation and direction, the writ petition is disposed of. No costs. Consequently, the connected miscellaneous petition is closed."

4. The learned counsel for the respondents submitted that, when the earlier Writ Petition was disposed of, the respondent-Department had not given any specific instructions to him, as to whether the Appeals have been preferred as against the order passed by the Income Tax Appellate Tribunal, but today, the learned counsel has got instructions that authorization has been given by the Department to file Appeals.

5. Be that as it may, as on date, the orders passed by the Income Tax Appellate Tribunal has not been reversed/modified/altered/stayed by this Court, and an Appeal has only been authorized to be filed.

6. Thus, taking into consideration the above facts and circumstances, and the order passed by this Court, in the earlier Writ Petition, (quoted supra) in respect of the same assessee, for the previous assessment year, 2012-13, this Court is of the view that the recovery proceedings initiated against the petitioner shall remain stayed till the Appeals are heard and disposed of by the second respondent.

7. The Writ Petition is disposed of, accordingly. Consequently, connected Miscellaneous Petition is closed. No costs.

Sd/-
Asst.Registrar (CS VI)

/true copy/

Sub Asst. Registrar

To

1. The Deputy Commissioner of Income Tax
   (Exemptions)
   Chennai Circle,
   Annexe Building, III Floor,
   121, Mahatma Gandhi Road,
   Chennai- 600 034.

2. The Commissioner of Income Tax (Appeals)
   121, Mahatma Gandhi Road,
   Chennai- 600 034.

+2 cc's to Dr.Anita Sumanth, advocate,sr.37054

+1 cc to Mr.J.Narayanaswamy, Advocate,sr.37112.

bvr(co)
krd 22/7

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