IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 5.12.2016

Coram:

THE HONOURABLE MR. JUSTICE HULUVADI G. RAMESH
AND
THE HONOURABLE DR. JUSTICE ANITA SUMANTH

TAX CASE (APPEAL) Nos. 784, 785, 837 and 838 of 2015

&

T.C.A.No.682 of 2016,

The Commissioner of Income Tax,

Chennai .. Appellant in all the appeals

Versus

M/s.Hyundai Motor India Ltd.,
Plot No.H1, SIPCOT Industrial Park,
Irungattukottai, Sriperumbudur,
Kancheepuram District. ..Respondent in TCA.Nos.784,785 837, 838 of 2015

M/s.Aban Offshore Ltd.,
113, Pantheon Road, Egmore,
Janpriya Chest, Chennai 600 008.
.. Respondent in TCA.No.682 of 2016

Prayer in TCA.No.784 of 2015: Tax Case Appeal filed under Section 260-A of the Income Tax Act against the order of Income Tax Appellate Tribunal, Madras "B" Bench, Chennai dated 26.09.2014 passed in SP.No.262/Mds/2014 in I.T.A.No.2157/Mds/2011, against the order dated 31.10.2011 passed by the Deputy Commissioner of Income Tax Large Tax, payer unit, Chennai for the assessment year 2007-08.

Prayer in TCA.No.785 of 2015: Tax Case Appeal filed under Section 260-A of the Income Tax Act against the order of Income Tax Appellate Tribunal, Madras "B" Bench, Chennai dated 26.09.2014 passed in SP.No.263/Mds/2014 in I.T.A.No.2353/Mds/2012, against the order dated 29.10.2012 passed by the Deputy Commissioner of Income Tax Large Tax, payer unit, Chennai for the assessment year 2008-09.

Prayer in TCA.No.837 of 2015: Tax Case Appeal filed under Section 260-A of the Income Tax Act against the order of Income Tax Appellate Tribunal, Madras "B" Bench, Chennai dated 02.05.2014 passed in SP.No.153/Mds/2014 in I.T.A.No.2157/Mds/2011,against the order dated 31.10.2011 passed by the Deputy Commissioner of Income Tax Large Tax, payer unit, Chennai for the assessment year 2007-08.

Prayer in TCA.No.838 of 2015: Tax Case Appeal filed under Section 260-A of the Income Tax Act against the order of Income Tax Appellate Tribunal, Madras "B" Bench, Chennai dated 2.5.2014 passed in SP.No.154/Mds/2014 in I.T.A.No.2353/Mds/2012, against the order dated 29.10.2012 passed by the Deputy Commissioner of Income Tax Large Tax, payer unit, Chennai for the assessment year 2008-09.

Prayer in TCA.No.682 of 2016: Tax Case Appeal filed under Section 260-A of the Income Tax Act against the order of Income Tax Appellate Tribunal, Madras "D" Bench, Chennai dated 29.1.2016 passed in SP.No.6/Mds/2016 in I.T.A.No.585/Mds/2015, against the order dated 10.04.2015 passed by Accountant member & Judicial member,The Income Tax Appellate Tribunal 'B'Bench, Chennai for the assessment year 2010-11.

For Appellant in all appeals .. Mr. T. Ravikumar

For Respondent in all appeals.. Mr. Venkata Narayanan for

M/s. Subbaraya Aiyar

JUDGMENT

(Judgment of this Court was delivered by ANITA SUMANTH, J.)

These Tax Case Appeals are filed at the instance of the Revenue raising the following substantial questions of Law:

T.C.A.Nos.784, 785, 837 and 838 of 2015

"1. Whether the Tribunal is right in holding that the assessee had cooperated in the appeal proceedings and granted stay of recovery of tax for a further period of 90 days or until disposal of the appeal, whichever is earlier, which is contrary to the statutory provisions contained in Section 254(2A) of the Income Tax Act, 1961? and

2. Is not the finding of the Tribunal bad by granting stay of further period of 90 days or until the disposal of the appeal, which is contrary to the statutory provision

enacted and against the intention of the Legislature?"

T.C.A.No.682 of 2016

"1. Whether on the facts and circumstances of the case the Tribunal was right in extending the stay beyond the period of 365 days which is contrary to the 3rd proviso stated in Sec.254(2A) of the Income Tax Act, 1961?

2. Is not the finding of the Tribunal bad by extending the stay for a further period of 6 months which is contrary to the statutory provisions enunciated in section 254(2A) 3rd proviso?

3. Whether the Tribunal has the power to grant stay beyond 365 days in aggregate especially when the 3rd proviso to Sec.254(2A) clearly indicates that if the appeal is not disposed off within the period allowed then the order of stay shall stand vacated?"

2. Appeals were filed by the respondent/assessee before the Income tax Appellate tribunal ('Tribunal') in respect of assessment years 2010-11 and 2011-12. During the pendency of the appeals, the assessee moved the tribunal for the grant of ad-interim stay of proceedings for recovery, whereupon, an order dated 10.4.2015 was passed in S.P.166/Mds/2015 granting stay for a period of six months on condition that the assessee shall pay two instalments of Rs.2,00,00,000/- of one before 30.04.2015 and the other before 20.5.2015. The conditional stay granted on 10.4.2015 was extended vide order dated 29.1.2016 for another period of six months, upto 30.4.2016 and yet again, up to 15.6.2016. The Department is before us challenging the multiple extension of interim orders, beyond a period of 365 days.

3. Mr. Ravikumar, learned Standing counsel appearing for the Department would refer to the judgments of the Delhi High Court in CIT Vs. Maruti Suzuki (India) Ltd, (2014) 44 Taxmann.com 166, Karnataka High Court in CIT Vs. Ecom Gill Coffee Trading P Ltd (362 ITR 204) and Bombay High Court in Jethmal Faujimal Soni Vs. ITAT and others in support of the position canvassed.

4. In the cases referred to supra, the appeals were alive before the Tribunal when the tax case (appeals) were taken up for adjudication by the High Court. In the present case, however, the appeals of the assessee and the Department have been finally disposed of by the Tribunal. The substantial

questions of law raised before us are thus rendered academic and are not answered.

5. However we may point out that the proviso to section 254(2A) of the Income Tax Act ('Act') imposes a maximum time limit of 365 days for the grant of Stay. This is to facilitate timely disposal of appeals and to ensure that demands involved are not kept outstanding inordinately. With these observations, all the appeals are disposed of as infructuous. No costs.

Sd/-
Assistant Registrar

//True Copy//

msr Sub Assistant Registrar

To

1.The Asst. Registrar,
Income Tax Appellate Tribunal,
Besant Nagar, Cehnnai.

2. The Director,
Central Board of Direct Taxes, New Delhi.

3. Income Tax Appellate Tribunal,
Madras 'D'Bench, Chennai.

4. Income Tax Appellate Tribunal,
Madras 'B'Bench, Chennai.

5. The Deputy Commissioner of Income Tax,
Large Tax Payer Unit, Chennai.

6. The Accountant member & Judicial Member,
Income Tax Appellate Tribunal 'B'Bench, chennai.

+2cc to Mr.Ravi kumar, Advocate, S.R.No.71634,71639
+2cc to Mr.Subburaya Aiyar, Advocate, S.R.No.71882,71883
+1cc to the Government Pleader, S.R.No.

SAI(CO)
RS(03/03/2017)

TAX CASE (APPEAL) Nos. 784, 785, 837 and 838 of 2015 & T.C.A.No.682 of 2016