IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 19.09.2016

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

Writ Petition No.28680 of 2016
and
W.M.P.No.24790 of 2016

M/s. Tamil Nadu State Marketing Corporation Ltd,
rep. by its Managing Director,
Shri R.Kirlosh Kumar,
4th Floor, CMDA Tower - II,
Gandhi Irwin Bridge Road,
Egmore, Chennai - 600 008. ...Petitioner

Vs.

1. The Assistant Commissioner of Income Tax,
Corporate Circle 3 (1),
124, MG Road, Chennai - 34.

2. The Commissioner of Income Tax,
Circle 3,
124, MG Road, Chennai - 34.

3. The Principal Commissioner of Income Tax,
Circle 3,
124, MG Road, Chennai - 34.

4. The Commissioner of Income Tax,
(Appeals)-11,
124, MG Road, Chennai - 34. ...Respondents

Writ Petition filed under Article 226 of the Constitution of India, for issuance of Writ of Certiorarified Mandamus to call for records of the petitioner on the file of the first respondent and to quash the impugned order in PAN/GIR : AAACT2964A/CORP CIR 3 (1) /2016-17, dated 28.07.2016, and consequently, to direct the first respondent not to initiate any recovery or coercive action for collection of demand for the assessment year 2013-14, till the disposal of Appeal filed by the fourth respondent.

For Petitioner : Mr.Vijayaraghavan for
M/s.Subbarayaaiyar Padmanabhan

For Respondents : Mr.M.Swaminathan
Standing Counsel
assisted by

Mrs.V.Pushpa

O R D E R

Heard Mr.Vijayaraghavan, learned counsel, representing M/s.Subbarayaaiyar Padmanabhan, learned counsel for the petitioner, and Mr.M.Swaminathan, learned Standing Counsel, assisted by Mrs.V.Pushpa, learned counsel for respondents.

2. The petitioner is a Tamil Nadu State Marketing Corporation Limited, and the challenge herein is to the order passed by the Assessing Officer/first respondent, directing the petitioner to remit 15% of the demand of tax for the assessment year 2013-14, pursuant to the order of assessment passed under Section 143 (3) of the Income Tax Act, 1961 (hereinafter, referred to as 'the Act').

3. The impugned order has been passed on a Stay Petition filed by the petitioner before the first respondent on 05.05.2016. On a perusal of the copy of the Stay Petition, it is seen that, it is an elaborate Petition, giving various facts under different heads, and, apart from referring to the clarifications issued by the Central Board of Direct Taxes (CBDT) etc., reference has also been made to the earlier orders of assessment, in particular, the assessment orders passed with regard to the years 2007-08 and 2008-09, wherein, the petitioner succeeded before the Income Tax Appellate Tribunal (ITAT).

4. Therefore, the learned counsel appearing for the petitioner would pray that the demand may be stayed, and the Appeal filed by the petitioner may be directed to be disposed of by the Commissioner of Income Tax (Appeals) - 11.

5. At the time, when the Writ Petition was entertained, i.e., on 18.08.2016, the following reasons were recorded for granting stay:-

> "Heard Mr.Vijayaraghavan, learned counsel for the petitioner, and Mr.M.Swaminathan, learned Standing Counsel, assisted by Mrs.V.Pushpa, learned counsel for respondents.

2. It is pointed out by the learned counsel for the petitioner that an identical issue was considered by this Court, in respect of the very same petitioner, in W.P.No.40775 of 2015, etc., cases on 16.06.2016, wherein, this Court granted an order in favour of the asssessee, directing that no action for recovery, or no other coercive action shall be taken against the petitioner/assessee, pursuant to the impugned orders therein till the Appeals are heard and disposed by the Commissioner (Appeals). It is also submitted by the learned counsel that, in respect of the assessment years 2007-08, and 2008-09, the petitioner succeeded before the Income Tax Appellate Tribunal, and that, though the petitioner made a detailed submission in their Stay Petition, referring to the factual matrix as well as various decisions of this Court, the impugned order has been passed without taking into consideration any of the points raised by the petitioner.

3. The learned Standing Counsel for the Department, who has accepted notice on behalf of the respondents, seeks time to get instructions and file a counter affidavit.

4. In the light of the above, there will be an order of interim stay. List on 19.09.2016. "

6. Today, when the matter came up for hearing, the learned Standing Counsel for the respondent-Income Tax Department pointed out that the Commissioner of Income Tax (Appeals) - 11 is considering the Appeal Petition filed by the petitioner for other assessment years, and infact, orders have been passed for the assessment years 2010-11 to 2012-13, by order, dated 06.09.2016. However, the learned Standing Counsel would submit that, in the light of the circular issued by CBDT, the petitioner should be directed to remit 15% of the tax, as quantified in the assessment order, and therefore, the order passed by the first respondent to the said effect, is reasonable.

7. After hearing the learned counsel appearing for the parties, and perusing the materials placed on record, it is seen

that the validity of the identical order was considered by this Court, in the petitioner's own case, viz., in W.P.No.40775 of 2015 and 18347 of 2014 etc., on 16.06.2016, wherein, similar orders, passed by the Assessing Officer, under Section 220 (3) of the Act, were put to challenge, and in the said Writ Petitions, condition was imposed for grant of stay. This Court, after considering the submissions on either side, and also taking note of the fact that, for almost 2 1/2 years, interim order was in force in one of the earlier Writ Petitions, and for about 1 1/2 years in other Writ Petitions, directed the Appeals itself to be disposed by the Commissioner of Income Tax Appeals, and made it clear to the respondents that pending disposal of the Appeals, no recovery action to be made against the petitioner.

8. Normal parameters followed, while granting interim orders either by the Civil Court or this Court are threefold, viz., i) Prima facie case, ii) Balance of convenience and iii) Irreparable hardship.

9. Though circulars have been issued by CBDT, the same, at best, can only be a guiding factor to the Officer, and that will not take away the discretion of the Officer while granting interim orders. The Officer, while considering the Stay Application, should consider the three factors pointed out above, should see as to whether the assessee has made out a case for grant of unconditional interim order/conditional interim order, or for rejecting the application for stay, in toto. Therefore, to do such exercise, reasons have to be recorded, and there is no such reasons assigned in the impugned order presumably, because, the first respondent, being a Subordinate Officer, would be bound by the circulars issued CBDT.

10. Considering the fact that, in respect of two cases, pertaining to the two assessment years 2007-08 and 2008-09, the petitioner has succeeded before ITAT, and other Appeals are also pending, and those Appeals should also be heard by the Commissioner of Income Tax Appeals -11. So far as the assessment order, dated 06.09.2016, for the years 2010-11 to 2012-13 is concerned, it is submitted by the learned counsel appearing for the petitioner that the certified copy of the order is yet to be received by them, and they would challenge the same before the Tribunal.

11. In the light of the above facts, coupled with the further fact that the Appeals filed by the petitioner for the assessment years 2010-11 to 2012-13, have already been disposed of, and the impugned assessment is relating to the year 2013-14, it would be suffice to direct the fourth respondent-Commissioner

of Income Tax (Appeals)-11 to consider the Appeal Petition filed by the petitioner on merits and in accordance with law, as expeditiously as possible, preferably, within a period of eight weeks from the date of receipt of a copy of this order. Until the disposal of the Appeal, no action for recovery shall be initiated by the respondents.

12. With the above directions, the Writ Petition is disposed of. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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To

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1 cc to M/s.M.Swaminathan, Advocate, sr.53095

Writ Petition No.28680 of 2016

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kra 17.10.2016