IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.01.2016

CORAM:

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

W.P.No.822 of 2016

M/s.Space N Place Promoter Private Limited,
represented by its Director
A.P.Ashok Kumar,
18, V.V.Koil Street,
Periamet, Chennai 600 003.
.. Petitioner

Vs.

1. The Commissioner of Income Tax (Appeals),
Office of the Commissioner of Income Tax,
Chennai.

2. Joint Commissioner of Income Tax,
Corporate Range 6,
Aayakar Bhawan,
Nungambakkam, Chennai.

3. The Income Tax Officer,
Office of the Income Tax Officer,
Corporate Ward-6 (4),
Aayakar Bhawan,
121, Mahatma Gandhi Road,
Nungambakkam, Chennai. ... Respondents

Prayer : Writ petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus to call for the records of the proceedings bearing C.No/CW-6(4)/Stay/2015-16 dated 29.12.2015 on the file of the second respondent and to quash the same and consequently stay all further proceedings arising out of the show cause notice dated 17.12.2014 as prescribed under Section 275(1) of the Income Tax Act.

For Petitioner : Mr.V. Raghavachari

For Respondent : Mr.T.Pramodkumar Chopda
Senior Standing Counsel

ORDER

Petitioner has filed this writ petition challenging the impugned proceedings C.No/CW-6(4)/Stay/2015-16 dated 29.12.2015 passed by the second respondent and for a consequential direction to stay all further proceedings arising out of the show cause notice dated 10.11.2014.

2. Heard the learned counsel appearing for the petitioner and the learned Senior Standing Counsel appearing for the respondent.

3. The petitioner, who is a private limited company engaging in the business of construction is an Income Tax assessee on the file of the 2nd respondent. It filed its returns before the 2nd respondent for the assessment year 2011-12. The 2nd respondent issued a show cause notice on 10.11.2014 alleging that the petitioner had concealed income for the assessment year 2011-12 and called upon the petitioner to show cause as to why penalty should not be levied against it under Section 271-D of the Income Tax Act, 1961. The petitioner filed a detailed reply to the said show cause notice vide its reply dated 17.12.2014. On 10.2.2015, the 2nd respondent issued a show cause notice to the petitioner as to why an order imposing penalty on it should not be made under section 271D of Income Tax Act, 1961. Inspite of several opportunities given, since the petitioner did not appear or furnish details, the 2nd respondent issued a notice levying penalty of Rs.1,10,26,000/- under Section 271D of Income Tax Act on 28.8.2015 and demanded the said amount, against which, the petitioner preferred an appeal before the 1st respondent. The stay petition filed before the 3rd respondent was rejected stating that the reason cited by the petitioner is not acceptable and not satisfactory to allow the stay of collection of tax. Aggrieved against the order passed by the 3rd respondent the petitioner is before this Court.

4. Learned counsel for the petitioner submitted that the impugned order is patently illegal and without jurisdiction and despite the categorical bar under section 275(1) of the Income Tax Act, 1961, the 2nd respondent has issued a demand notice on 28.8.2015 calling upon the petitioner to pay the dues pending appeal.

5. The learned Senior Standing Counsel, on the other hand, supported the orders under challenge.

6. The petitioner seeks to quash the proceedings bearing C.No/CW-6(4)/Stay/2015-16 dated 29.12.2015 on the file of the 2nd respondent, which is nothing but a recovery proceedings on the basis of a show cause notice dated 10.11.2014 issued under section 271D of Income Tax Act. Admittedly, stay application

moved before the assessing authority got rejected and as on date, there is no stay application pending before the jurisdictional commissioner. Hence, in the interest of justice, the petitioner is directed to move application for stay before the concerned jurisdictional Commissioner within a period of two weeks from the date of receipt of a copy of this order and on such stay application being presented, the same shall be considered and necessary orders be passed on merits and in accordance with law, after affording due opportunity to the petitioner, within a period of four weeks thereafter. Pending disposal of the same, there shall not be any recovery against the petitioner by the respondent authorities.

7. The Writ Petition is disposed of with the above directions. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Asst.Registrar (CS III)

/true copy/

Sub Asst. Registrar

msr

To

1. The Commissioner of Income Tax (Appeals),
Office of the Commissioner of Income Tax,
Chennai.

2. Joint Commissioner of Income Tax,
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Aayakar Bhawan,
Nungambakkam, Chennai.

3. The Income Tax Officer,
Office of the Income Tax Officer,
Corporate Wad-6 (4),
Aayakar Bhawan,
121, Mahatma Gandhi Road,
Nungambakkam, Chennai.

1 cc to M/s. V. Raghavachari, Advocate, Sr. 1919
1 cc to M/s.T. Pramodkumar Chopda, Advocate, Sr. 1957

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