IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28/3/2016

C O R A M

THE HONOURABLE MR. JUSTICE M.DURAISWAMY

Writ Petition No.8232 of 2016

&

WMP.NOS.7314 & 7315/16

Mahindra Residential Developers Ltd
a Company registered under the Companies Act
rep. By its Authorized Signatory Mr.R.Eswaran
having Office at Administrative Block
Central Avenue
Mahindra World City
Mahindra World City Sub (PO)
Chengalpet Taluk
Kancheepuram 603 004. ...Petitioner

Vs.

1. The Principal Commissioner of Income Tax:
   Chennai - 4
   301 Wanaparthy Block
   Ayakar Bhavan
   121 Mahathma Gandhi Road
   Chennai 34.

2. The Commissioner of Income Tax (Appeals - VIII)
   121 Mahathma Gandhi Road,
   Chennai 34.

3. The Income Tax Officer,
   Corporate Ward 4 (1) Main Building
   4th Floor, Room No.429,
   121 Mahathma Gandhi Road, Chennai 34.

...Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari to call for the records of the third respondent relating to the proceedings in C.No.STAY PETITION/Pr.CIT-4/2015-16 dated 26/2/2016 and quash the same.

For Petitioner ... Mr.R.Bharath Kumar

For respondents ... Mr.T.Pramod Kumar Chopda
Standing Counsel.

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ORDER

With the consent of the learned counsel appearing on either side, this writ petition is taken up for final disposal.

2. Heard Mr.R.Bharath Kumar, learned counsel for the petitioner and Mr.T.Pramod Kumar Chopda, learned Standing Counsel for the respondents.

3. This writ petition has been filed, praying to quash the order passed by the third respondent in C.No.STAY PETITION/Pr.CIT-4/2015-16, dated 26/2/2016.

4. It is the case of the petitioner that they are engaged in the business of providing infrastructure facilities in the IT Special Economic Zone (SEZ) at Mahindra World City at Chengalpet. Pursuant to the Letter of Approval, dated 25/4/2008, issued by the Government of India, the petitioner started its business activities of Co-Developer in SEZ. Further, according to the petitioner, they are entitled to claim deductions in respect of its income, as provided under Section 80-IAB of the Income Tax Act, 1961. The petitioner being the co-developer is entitled for exemption for a period of ten consecutive years out of 15 assessment years.

5. On 17/4/2013, the petitioner filed its revised return of income for the assessment year 2012 - 13, under Section 80 IAB of the Income Tax Act. On 31/3/2015, the third respondent passed an order under Section 143 (3) of the Income Tax Act, disallowing the claim of deduction, under Section 80 IAB of the Income Tax Act, for a sum of Rs.1,22,19,398/-. On 22/4/2015, the petitioner filed a statutory appeal, before the second respondent, challenging the order of assessment, dated 31/3/2015, passed by the third respondent. Along with the appeal, the petitioner also filed a stay petition before the third respondent, under Section 220 sub-clause (6) of the Income Tax Act, 1961. By an order dated 24/4/2015, the third respondent rejected the application for stay, without considering the circular No.95 dated 21/8/1969.

6. The petitioner filed a writ petition in W.P.No.14239/2015 before this Court, challenging the order of

rejection of stay by the third respondent. By an order dated 5/1/2016, this Court disposed of the writ petition, giving liberty to the petitioner to move an application for stay before the jurisdictional Commissioner and directed the authorities not to take any cohesive steps till the disposal of the stay petition. Pursuant to the orders of this Court, the petitioner filed a stay petition before the jurisdictional Commissioner. By an order dated 26/2/2016, the first respondent passed an order of conditional stay, remitting 50% of the demand amount in three instalments. Challenging the said order, the petitioner has filed the above writ petition.

7. On a perusal of the impugned order dated 26/2/2016, it could be seen that the first respondent had passed an order without giving any reasons for calling upon the petitioner to make payment of 50% of the demand.

8. Mr.T.Pramod Kumar Chopda, learned Standing Counsel appearing for the respondents, contended that the order passed by the first respondent is just and proper and in accordance with law.

9. Since the first respondent has not given any reasons in calling upon the petitioner to pay 50% of the demand amount, the impugned order is liable to be set aside and the matter is remanded to the respondents for fresh consideration.

10. Accordingly, this writ petition is disposed of, setting aside the impugned order passed by the first respondent, dated 26/2/2016. The first respondent is directed to decide the matter afresh, after taking into consideration the submissions made by the learned counsel appearing for the petitioner and also taking into consideration the Circular No.95, dated 21/8/1969 and after affording an opportunity of personal hearing to the petitioner and pass a reasoned order, on merits and in accordance with law, within a period of four weeks, from the date of receipt of a copy of this order.

11. The learned counsel appearing for the petitioner submitted that the petitioner would appear before the first respondent on 15/4/2016.

No costs. Consequently, the connected Miscellaneous Petitions are closed.

mvs.

Sd/-
Asst.Registrar

/true copy/
Sub Asst. Registrar

To

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   Ayakar Bhavan,
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   4^{th} Floor, Room No.429,
   121 Mahathma Gandhi Road,
   Chennai 34.

+ 1 cc to Mr.R.Bharath Kumar, Advocate Sr 19650

+ 1 cc to Mr.T.Pramod Kumar Chopda, Advocate Sr 19219

KR/11/4/16

W.P.No.8232 of 2016