IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.01.2016

CORAM:

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

W.P.No.36095 of 2002

Tamil Nadu Steel Tubes Ltd.,
7A, Sunkurama Street,
Chennai - 600 001. .. Petitioner

Vs.

The Assistant Commissioner of Income Tax,
Central Circle IV (2),
M.G.Road, Chennai - 600 034. ... Respondent

Prayer : Writ petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Mandamus forbearing the respondent from initiating or proceeding with any other proceedings for recovery of tax demand for the Block Assessment period 1991-92 to 2000-01 up to 26.06.2000 as per their Demand Notice PAN AAACT238/C dated 30.08.2002 in A.O.CODE/DLC/CC/54/2 dated 30.08.2002 of the respondent.

For Petitioner : Mr.P.R.Shankar

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

ORDER

The petitioner has come forward with this Writ Petition challenging the demand notice issued by the respondent in A.O.CODE/DLC/CC/54/2, dated 30.08.2002

2. Heard the learned counsel for the petitioner and Mr. T.Pramod Kumar Chopda, learned Senior Standing Counsel appearing for the respondent.

3. The petitioner is a public limited company engaged in the business of manufacturing and trading of steel pipes and tubes etc. The petitioner filed returns in respect of Block Assessment for the block period 1990-91 to 2000-01 upto 26.6.2000 and the tax had been remitted during the relevant years itself. After processing the same, the respondent issued a notice on 8.2.2002 under Section 143(2) of the Income Tax Act 1961 demanding the petitioner to submit the particulars under Section 142(1) of Income Tax Act. Subsequently, the

Department has initiated penalty proceedings also under Section 158 BFA (2) of the Income Tax Act and demanded the petitioner along with the show cause notice, for which the petitioner submitted all the relevant records and the same was disallowed by the respondent.

4. Aggrieved over the same, the petitioner preferred an appeal before the Tribunal, but the Income Tax Department issued a notice under section 156 of the Income Tax, 1961 demanding the petitioner to remit the amount immediately, failing which, coercive action would be proceeded with 100% penalty amount. Since the company has been declared as "Sick" under the Sick Industrial Companies Act, 1985 and the case had already been admitted by the Board of Industrial Financial Reconstruction (BIFR) as case No.258 of 2000, the petitioner company requested the respondent to stay the collection of demand due by the petitioner, but notwithstanding the aforesaid request, the respondent issued a demand notice dated 30.08.2002 demanding Rs.1,64,09,414/- from the petitioner, failing which, coercive proceedings against the petitioner under Section 226 of the Income Tax Act will be initiated.

5. It is the case of the petitioner that under Section 22 of the Sick Industrial Companies (Special Provision) Act 1985, in respect of an Industrial undertaking, an enquiry under section 16 had already commenced and the same is pending. It is its further case that when the enquiry on an application filed by the petitioner before the Board is pending, the proceedings for the recovery of the tax against the petitioner cannot be taken. Hence under the circumstances, the attempt of the respondent to initiate proceedings by coercive process is wholly bad in law and the recovery proceedings cannot be taken during the pendency of such proceedings before the Board for Industrial and Financial Reconstruction .

6. Learned counsel for the petitioner submitted that pending appeal, when a stay petition is filed to stay the demand, the recovery proceedings are bad in law. Further the petitioner company was declared as a Sick unit and an application for reconstruction before the Board for Industrial and Financial Construction was made and the proceedings on the same has been pending. Hence, pending proceedings, no action could be initiated for recovery of demand by the respondent and the same amounts to violation of provisions of Section 22 of the Sick Industrial Companies Special Provision Act, 1985.

7. Today, when the matter is taken up for hearing, the learned counsel for the petitioner is able to produce a communication dated 26.11.2015 before this court issued by Board

for Industrial and Financial Reconstruction under Right to Information Act, to that effect that the proceedings before the said Board are still pending for further examination under the MDRS scheme.

8. In view of the communication dated 26.11.2015 issued by Board for Industrial and Financial Reconstruction, produced by the learned counsel for the petitioner, this Writ Petition is disposed of by directing the the respondent to initiate further proceedings against the petitioner only after obtaining necessary approval/orders from the Board for Industrial and Financial Reconstruction.

9. With the above direction, this Writ Petition is disposed of No costs. Consequently, the connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

To

The Assistant Commissioner of Income Tax,
Central Circle IV (2),
M.G.Road, Chennai - 600 034.

+1cc to Mr.T.Pramodkumar Chopda, Advocate, S.R.No.1158
+1cc to Mr.P.R.Shankar, Advocate, S.R.No.691

W.P.No.36095 of 2002

kgk(CO)
srg(09/02/2016)