HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN

AND

HON'BLE SMT JUSTICE ANIS

W.P.No.32185 of 2016

ORDER: (per V. Ramasubramanian, J.)

The Assessee, who holds a registration under Section 12 A of the Income Tax Act, 1961, has come up with the present writ petition challenging the demand made by the respondents for payment of the disputed tax, though the appeal filed by it is still pending.

2. Heard Sri G. Madhusudhan Reddy, learned counsel for the petitioner.

3. In view of the limited nature of the disposal that we propose to give, we directed Sri J.V. Prasad, learned standing counsel for the Department to take notice.

4. The petitioner filed a return of income for the Assessment year 2012-2013 on 30-09-2012 declaring a total income of NIL. The case was selected for scrutiny and the assessment was completed on 31-03-2015 under Section 143 (3) of the Act. By the order of assessment, a demand for a sum of Rs.43,43,690/- was made.

5. The petitioner filed a first appeal before the Commissioner of Income Tax (Appeals). The petitioner also filed a stay petition before the Assessing Officer. By an order dated 07-05-2015 the Assessing Officer granted stay subject to condition that the petitioner pays Rs.3,00,000/- per month from June, 2015 for a period of 7 months. But unfortunately, the stay was restricted only to a period of one year

from the date of the order of assessment or till disposal of the appeal, whichever was earlier.

6. The appeal has not been disposed of by the Commissioner of Income Tax (Appeals) till today. In the meantime, the period of one year for which the stay was granted by the Assessing Officer, expired on 31-03-2016. Therefore, despite the petitioner having complied with the conditional order, a notice of demand has been issued on 01-04-2016 by the 1st respondent herein.

7. When the petitioner moved the 1st respondent once again, he passed an order directing the payment of the balance amount in monthly instalments @ Rs.2,00,000/- per month. The petitioner moved the Additional Commissioner of Income Tax (2nd respondent herein), but it was of no avail. Then the petitioner moved the 3rd respondent, who dismissed the stay petition. Hence, the present writ petition.

8. There is no dispute about the fact that the first appeal filed by the petitioner is pending on the file of Commissioner of Income Tax (Appeals). There is also no dispute about the fact that the petitioner is not responsible for the delay in disposal of the appeal beyond a period of one year. Admittedly, the petitioner has paid nearly 50% of the total demand, as directed by the 1st respondent herein in his original order dated 13-05-2015 granting a stay. Therefore, we are of the considered view that the demand to pay the balance disputed tax also, due to the non-disposal of the appeal by the Appellate Authority, is not fair.

9. In view of the above, the writ petition is disposed of directing the Appellate Authority, viz., the 4th respondent herein, to dispose of the main appeal filed by the petitioner within a period of 4 (four) weeks from the date of receipt of a copy of this order. Until the disposal of the appeal, the demand made by the 1st respondent for the balance of disputed tax shall stand stayed.

As a sequel thereto, miscellaneous petitions, if any, pending shall stand closed.

V. RAMASUBRAMANIAN, J

ANIS, J

Date: 23-09-2016

Ksn/JS