THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN
And
THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

WRIT PETITION No.4588 of 2016

ORDER: (per Hon'ble Sri Justice Ramesh Ranganathan)

Aggrieved by the assessment order passed for the assessment year 2012-13, levying tax of Rs.8,66,007/-, the petitioner carried the matter in appeal to the Commissioner, Income Tax (Appeals). They also filed an application, under
Section 220 (6) of the Income Tax Act, 1961 (for brevity, 'the Act'), requesting the assessing authority to grant stay of the demand. By his order dated 24.06.2015, the assessing authority granted stay of 50% of the demand till 31.12.2015. He directed that the balance demand of Rs.4,33,004/- should be paid in eight equal monthly instalments from 05.07.2015 to 05.02.2016; the first of which was required to be paid before 05.07.2015 for Rs.54,125/-. Aggrieved thereby, the petitioner approached the Commissioner who, while granting stay of 50% of the demand, directed payment of the remaining balance of 50% in six equal monthly instalments of Rs.70,217/- each. The petitioner appears to have paid a total sum of Rs.2,16,660/- till date.

While Sri Sk.Jeelani Basha, learned counsel for the petitioner, would refer to the CBDT circular dated 02.12.1993 to submit that clause (c) (v) thereof requires the assessing authority to pass a speaking order which he failed to, Sri B.Narasimha Sarma, learned Special Standing Counsel for Commercial Taxes, would submit that the only ground raised by the petitioner, in the application filed by them under Section 220 (6) of the Act, is of financial hardship; the very fact that the assessing authority has granted stay of 50% of the demand shows that he took into consideration the petitioner's claim of financial hardship and, therefore, directed them only to pay the remaining 50% that too in eight instalments.

In view of the instructions issued by the CBDT dated 02.12.1993, the earlier circular dated 21.08.1969 is no longer in force. The CBDT had issued clarifications, by its proceedings dated 01.12.2009, that the instructions dated 21.08.1969 no longer exists, and instruction No.1914 dated 21.12.1993 holds good. In terms of the circular instructions of the CBDT dated 02.12.1993 the assessing authority is required to take into consideration certain factors while granting stay of the demand. They are:-

> "i. A demand will be stayed only if there are valid reasons for doing so. Mere filing an appeal against the assessment order will not be a sufficient reason to stay the recovery of demand. A few illustrative situations where stay could be granted are:
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> It is clarified that in these situations also, stay may be granted only in respect of the amount attributable to such disputed points. Further where it is subsequently found that the assessee has not co-operated in the early disposal of appeal or where a subsequent pronouncement by a higher appellate authority or court alters the above situation, the stay order may be reviewed and modified. The above illustrations are, ofcourse, not exhaustive.
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> ii. In granting stay, the assessing officer may impose such conditions as he may think fit. Thus he may—a) require the assessee to offer suitable security to safeguard the interest of revenue; b) require the assessee to pay towards the disputed taxes a reasonable amount in lumpsum or in instalments; c) require an undertaking from the assessee that he will co-operate in the early disposal of appeal failing which the stay order will be cancelled; d) reserve the right to review the order passed after expiry of a reasonable period, say upto 6 months, or if the assessee has not co-operated in the early disposal of appeal, or where a subsequent pronouncement by a higher appellate authority or court alters the above situations; e. reserve a right to adjust refunds arising, if any, against the demand".

Section 220 (6) of the Act stipulates that, where an assessee has presented an appeal under Section 246 or 246-A, the assessing authority may, in his discretion and subject to such conditions as he may think fit to impose in the circumstances of the case, treat the assessee as not being in default in the appeal, even though the time for payment has expired, as long as such appeal remains undisposed of.

While a discretion is conferred on the assessing authority under Section 220 (6) of the Act, to treat the assessee as not being in default, such discretion should be exercised for just and valid reasons. The assessing authority cannot be influenced solely by the assessment order which he has passed, as the said order is the subject matter of the appeal before the Commissioner of Income Tax (Appeals). While examining, whether or not the assessee should be treated as an assessee in default in respect of the disputed in the appeal, the assessing authority is also bound to safeguard the interests of the revenue, and impose such conditions as he considers it fit to impose in the circumstances of the case. In considering an application filed by the assessee, under Section 220 (6) of the Act, the assessing authority is bound to assign reasons for passing an order either with or without conditions.

It is evident from the order passed by the assessing authority that he has not assigned reasons for coming to the conclusion that the petitioner should be called upon to pay 50% of the demand, and that stay should be granted for the remaining 50%. It would be wholly inappropriate for this Court, in proceedings under Article 226 of the Constitution of India, to undertake the exercise of examining the petitioner’s application, under Section 220(6) of the Act, in order to determine whether or not the conclusions arrived at by the assessing authority, while exercising discretion under Section 220 (6) of the Act, is just and proper. Any order passed, in the exercise of the discretion under Section 220 (6) of the Act, must be a reasoned order. The circular instructions issued by the CBDT also requires, in clause (c) (v) thereof, for the assessing authority to communicate its decision in the form of a speaking order.

We consider it appropriate, in such circumstances, to set aside the impugned order and direct the assessing authority to pass an order afresh after giving the petitioner a personal hearing. It is made clear that the amount paid by the petitioner till date shall remain with the department till fresh orders are passed by the assessing authority in accordance with law.

The Writ Petition stands disposed of accordingly. Miscellaneous Petitions pending, if any, shall also stand disposed of. There shall be no order as to costs.

RAMESH RANGANATHAN, J

M.SATYANARAYANA MURTHY, J

16th February, 2016.
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