

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

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WRIT PETITION No.4227 of 2016

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

Heard Sri Abu Akram, learned counsel for the petitioner, and Ms.Mamatha Chowdari, learned Senior Standing Counsel for the Income Tax Department and, with their consent, the Writ Petition is being disposed of at the stage of admission.

For the assessment year 2011-12 the assessing authority subjected the petitioner to tax under the Income Tax Act, 1961 (for brevity, 'the Act') for Rs.51,27,953/-. Aggrieved thereby, the petitioner carried the matter in appeal to the Commissioner of Income Tax (Appeals). They filed an application before the Income Tax Officer under Section 220 (6) of the Act requesting him not to treat them as an assessee in default. By proceedings dated 28.05.2015 the Income Tax Officer directed the petitioner to pay Rs.9,00,000/- i.e. Rs.4,50,000/- by 13.06.2014, and the balance of Rs.4,50,000/- by 11.07.2014; and kept the remaining demand in abeyance, subject to such payment, till the disposal of the appeal by the appellate authority or 30.09.2014 whichever was earlier. The petitioner was directed to submit proof of payment of the instalments by the next working day, and was informed that he would be liable to pay interest, under Section 220 (2) of the Act, for the entire demand; and, in the event of failure to comply with the specified instalments granted on the dates mentioned, the petitioner would be treated as an assessee in default, and coercive measures for recovery of the entire amount would be taken.

While Sri Abu Akram, learned counsel for the petitioner, would place reliance on the circular instructions of the CBDT dated 21.08.1969, Ms.Mamatha Chowdari, learned Senior Standing Counsel for the Income Tax Department, would place before this Court a copy of the instructions, issued by the CBDT on 02.12.1993, to submit that the earlier circular instructions are no longer in force. She would further submit that, after the circular dated 02.12.1993 was issued, the CBDT had issued clarification

dated 01.12.2009 to the effect that instructions dated 21.08.1969 no longer existed, 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:

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.

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 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 tax 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.

In the present case, while the petitioner was no doubt asked to pay Rs.9,00,000/- that too in two instalments, the order does not disclose the reasons why the assessing authority considered it necessary to grant stay on condition of deposit of Rs.9,00,000/-. As it is bereft of reasons, the impugned order passed by the assessing authority, under Section 220 (6) of the Act, is set aside. The assessing authority shall, after giving the petitioner an opportunity of personal hearing, pass an order afresh under Section 220 (6) of the Act 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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