

**THE HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN
and
THE HON'BLE SRI JUSTICE U. DURGA PRASAD RAO**

WRIT PETITION Nos.34402, 34695, 34703, 34711 and 34713 of 2016

COMMON ORDER: (per VRS, J)

The petitioners in these Writ Petitions have sought issuance of writs of Mandamus to direct the respondents to stay the demands raised by the first respondent pursuant to the orders of assessment passed in relation to the assessment years 2008-09 and 2009-10.

Heard Mr. S. Rajagopalan, learned counsel for the petitioners and Ms. K. Mamatha Choudary, learned Standing Counsel appearing for respondents 1 to 3.

Two orders of assessment were passed on the same date namely 28.03.2016 by the first respondent in these writ petitions, the first relating to the assessment year 2008-09 and the second relating to the assessment year 2009-10. Within the period of limitation stipulated under the Income Tax Act, 1961 (for short 'the Act'), the petitioners filed statutory appeals before the Commissioner of Income Tax (Appeals). Admittedly, both the appeals are pending adjudication for the past more than five months.

Since there is no provision for seeking stay of the orders of assessment from the CIT (Appeals), the petitioners moved the Assessing Officer under Section 220(6) of the Act. Unfortunately, the Assessing Officer rejected the stay applications solely on the ground that the grounds of stay are same as the grounds of appeal.

Though there is no provision for taking up such orders by way of appeal to any higher authority, the petitioners submitted representations to the Principal Commissioner of Income Tax. The Principal Commissioner of Income Tax has revisional jurisdiction under Section 263(1) of the Act. Irrespective of whether he exercises revisional jurisdiction over the orders of the Assessing Officer passed on stay petitions or not, his power to grant stay of recovery has been recognized by CBDT Circulars. Therefore, the Principal Commissioner of Income Tax entertained the petitions for stay made by these writ petitioners and passed a common order, dated 20.07.2016. In the common order so passed, the Principal Commissioner pointed out two facts namely the demand raised from all the five writ petitioners for the assessment year 2008-09 worked out to Rs.3,81,74,382/- and the demand in relation to the assessment year 2009-10 worked out to Rs.3,39,14,238/-. In other words, the total demand

made on all the writ petitioners for the two assessment years taken together, worked out to more than Rs.7,00,00,000/-.

After taking note of the said demand and also after taking note of the fact that the total sale consideration was Rs.8.2 Crores, the Principal Commissioner of Income Tax kept in abeyance the total demand raised in respect of the Assessment Year 2009-10, till the disposal of the appeals. Insofar as the Assessment Year 2008-09 is concerned, the Principal Commissioner directed the writ petitioners to make a deposit of 15% of the demand that worked out to Rs.57,26,155/- in the aggregate for all the writ petitioners put together.

In other words, out of a demand of more than Rs.7,00,00,000/-, the Principal Commissioner has now directed all the writ petitioners to jointly pay a sum of Rs.57,26,155/- and kept the demand in relation to the balance amount of more than Rs.6.5 Crores in abeyance.

Interestingly, the petitioners are not aggrieved by the order, dated 20.07.2016 passed by the Principal Commissioner. These writ petitions do not challenge the order of the Principal Commissioner dated 20.07.2016. The prayer made in these writ petitions is to grant stay of demand made pursuant to the orders of assessment dated 28.03.2016 in relation to the assessment year 2008-09. In other words, the petitioners want this Court to grant

stay bypassing the order passed or overlooking the order passed by the Principal Commissioner, without even challenging the Principal Commissioner's order. Therefore, at the outset, we do not think that we will be able to entertain the writ petitions in the absence of a challenge to the Principal Commissioner's order.

De hors technicalities, the petitioners have been granted the benefit of an absolute stay in respect of one assessment year namely 2009-10. In respect of the other assessment year, the petitioners have been granted stay on condition that they deposit 15% of the demand. Therefore, we do not think that the cases on hand deserve any more consideration than the consideration given by the Principal Commissioner. Hence, the Writ Petitions deserve to be dismissed.

However, since the time limit granted by the Principal Commissioner to the petitioners to make payment of the amounts indicated in his order, dated 20.07.2016 has already expired, we grant to the writ petitioners, the time to comply with the order, dated 20.07.2016.

It is represented by the learned counsel for the petitioners that due to the failure of the petitioners to comply with the conditional order passed by the Principal Commissioner, the bank accounts were attached. It is not known whether the total amount now lying in the banks after attachment, are sufficient to satisfy

the condition imposed by the Principal Commissioner. If the amounts already attached are equal to satisfy the condition imposed by the Principal Commissioner in his order, dated 20.07.2016, the respondents shall revoke the garnishee orders in respect of the balance amounts. If the amounts lying in the banks are not sufficient to make up for the conditions imposed on 20.07.2016, the petitioners shall deposit the amount representing the shortfall within two weeks from the date of receipt of a copy of this order. By this process, the Department may recover the amount of Rs.57,26,155/- by directing the bank to release the amount to the said extent to the respondents without prejudice to the rights of the petitioners in the appeals lying before the Commissioner of Income Tax (Appeals).

Accordingly, the Writ Petitions are disposed of.

Pending miscellaneous petitions, if any, shall also stand closed. No order as to costs.

17th OCTOBER, 2016.

V. RAMASUBRAMANIAN, J

U. DURGA PRASAD RAO, J

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