THE HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN

AND

THE HON'BLE SMT JUSTICE ANIS

<u>WRIT PETITION Nos. 25865, 25924 & 26192 of 2016</u>

<u>COMMON ORDER:</u> ***(Per VRS,J)***

Challenging an order passed by the Assessing Officer under Section 220(6) of the Income Tax Act, 1961, the assessee Company has come up with the first writ petition, W.P.No.25865 of 2016, while the Directors of the Company have come up with the second and third writ petitions, W.P.Nos.25924 and 26192 of 2016, seeking a direction to the respondents 1 and 2 therein to refund the amount recovered in excess of 15% of the demand.

2. Heard Mr. Y. Ratnakar, learned counsel for the petitioners, and Mr. K. Raji Reddy, learned standing counsel for Income Tax Department.

3. The assessee filed its return of income for the assessment years 2012-2013, 2013-2014 and 2014-2015 respectively for the amounts of Rs.98,41,100/-, Rs.1,04,86,040/- and Rs.1,98,96,840/-.

4. The assessment was initially completed under

Section 143(3). But, it was subsequently reopened and completed by an assessment order, dated 13.04.2016, determining the total income for the assessment year 2012-2013 at Rs.2,93,50,547/-. For the assessment year 2013-2014, the income assessed was Rs.3,47,95,353/- and for the assessment year 2014-15, the income assessed was Rs.9,92,45,477/-.

5. Eventually, a demand for tax to the tune of Rs.5,28,13,180/- was made. The orders of assessment were challenged by the assessee before the CIT (Appeals). Simultaneously, the assessee moved applications before the Assessing Officer under Section 220(6) for stay. But, in the meantime, the Assessing Officer recovered a sum of Rs.2,09,99,948/-, out of the total demand of Rs.5,28,13,180/-. Therefore, the assessee has come up with the first writ petition, W.P.No.25865 of 2016.

6. The prayer in the first writ petition is three-fold. The first prayer is to refund the amount in excess of 15% of the total demand, on the basis of the CBDT Circular, dated 03.03.2016, which itself is based upon earlier Office Memorandum, dated 29.02.2016. The second prayer is to raise the orders of attachment issued under Section

226(3). The third prayer is to direct the appellate Commissioner to dispose of the appeals.

7. There is no dispute about the fact that as per the Office Memorandum, dated 29.02.2016, the CBDT indicated that a stay of payment may be granted by the Assessing Officers on payment of 15% of the disputed demand. But, in this case, the respondents have recovered about 40% of the total demand. But, the same cannot be a ground for a positive direction to refund the amount in excess of 15% of the total demand. Therefore, the first part of the prayer cannot be granted.

8. However, inasmuch as merely 40% of the total demand has been recovered, the orders of attachment crippling the assessee should go. Otherwise, the appeals filed by the assessee, which happened to be statutory appeals, would be rendered an exercise in futility. Therefore, the first writ petition, W.P.No.25865 of 2016, is disposed of, directing the respondents to raise the orders of attachment, insofar as they seek to recover the balance of demand, over and above the amount already recovered. The Commissioner (Appeals) is directed to dispose of the appeals, within a period of three months from the date of receipt of a copy of this order.

9. In view of disposal of the first writ petition, both the second and third writ petitions, W.P.Nos.25924 and 26192 of 2016, are dismissed. If the fixed deposits have been attached, the respondents are directed to raise the attachment, so that the petitioners can take up the matter with the Banks.

Consequently, miscellaneous petitions if any pending in all the writ petitions shall stand dismissed. No order as to costs.

V. RAMASUBRAMANIAN, J

ANIS, J.

5th August, 2016
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