IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 7241 OF 2017

M/s. Rolls-Royce Marine India Private Limited … Petitioner
Vs.
The Deputy Secretary Central Board of Direct Taxes & Ors. … Respondents

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Mr. Bharat Raichandani i/b. UBR Legal for the Petitioner.
Mr. Suresh Kumar a/w Ms. Samiksha Kanani for the Respondents.

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CORAM : S. C. DHARMADHIKARI &
SMT. VIBHA KANKANWADI, JJ.

DATE : AUGUST 28, 2017.

P.C. :

1. The petitioner claims to be an Employees Superannuation Scheme and registered as a trust. It is created on 1st April, 2008. It is for provision of retirement benefits to the eligible employees of M/s. Rolls-Royce Marine India Private Limited.

2. The petitioner challenges a notice/communication dated 30th March, 2017, copy of which is annexure “A2”. At the outset and without prejudice to the pending proceedings or the contentions therein, Mr. Raichandani states that the petitioner is not pressing the Petition insofar as prayer clauses (a) and (b) of this Petition. Hence, the legality and validity of the notice dated 30th March, 2017 need not be considered.

3. The only relief that is sought is in terms of prayer clause (c). That prayer reads as under:

> *"(c) That this Honorable Court be pleased to direct the Respondent No.2 to produce a copy of the approval letter issued, if any;"*

4. From a perusal of this prayer clause, it is evident that the petitioner relies upon a communication from the office of the Principal Commissioner of Income Tax-15 dated 15th April, 2016.

5. That directs the petitioner to make a fresh application for approval of this scheme and in terms of Part B of the Fourth Schedule of the Income Tax Act, 1961. The said Part is titled as "Approved Superannuation Funds". It contains several rules and referable to various Sections of the Income Tax Act, 1961. It is only when an approval in terms of these rules is granted, and particularly rule 2, that the trust can claim any benefits.

6. However, what we find is that the petitioner-superannuation scheme is subjected to tax and an order was passed by the Income Tax Officer-28(2)(5), Mumbai, on 17th March, 2016. That is for the assessment year 2013-2014. The grounds of appeal, which are part and parcel of the appeal pending before the Commissioner of Income Tax (Appeals) challenging this order, refer to the application which has been filed for approval. The contention is that this application is neither rejected, nor any further information has been called for.

7. Our attention is invited to page 68 of the paper book. It is stated that the petitioner has been claiming such an approval and in terms of the request made in writing from November, 2008. The earliest application was made on 24th November, 2008 in that behalf.

8. We do not think that in this Writ Petition, we can allow the petitioner to raise the issue of non-consideration of this application for approval or not passing any order on the request in that behalf.

9. Pertinently, all these matters are raised by the petitioner while challenging the notice, copy of which is annexure "A2" (page 20 of the paper book). That informs the petitioner that the Income Tax Officer has reason to believe that income chargeable to tax for the assessment year 2011-12 has escaped assessment within the meaning of Section 147 of the Income Tax Act, 1961. The Income Tax Officer, therefore, proposes to re-assess the income for the said assessment year. A similar notice has been issued for the assessment year 2010-11. The reasons for re-opening the assessment have also been communicated.

10. It is in these circumstances and when the substantive appeal is also pending against the assessment order dated 17th March, 2016 for the assessment year 2013-2014, we are not inclined to grant any relief in our writ jurisdiction.

11. It would be open for the petitioner to raise all grounds during the re-assessment proceedings and in pending appeal. It can also resist the demand for the assessment year 2013-2014 on all permissible grounds.

12. In the garb of seeking a direction in terms of prayer clause (c), the petitioner cannot avoid the consequences in law. The Petition is entirely misconceived and is dismissed.

(SMT. VIBHA KANKANWADI, J.) (S. C. DHARMADHIKARI, J.)