IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.02.2017

CORAM:

THE HONOURABLE MR.JUSTICE RAJIV SHAKDHER

W.P.No.3093 of 2017
and
W.M.P.No.3006 of 2017

M/s.Rapid Care Transcription P. Ltd.,
rep by its Director V.L.Venkatasubramanian
Old No.21, New No.41, VLV Complex,
Mount Road, Little Mount, Saidapet,
Chennai - 600 015. ... Petitioner

Vs.

1. The Commissioner of Income Tax (Appeals)-3,
Mahatma Gandhi Road, Chennai - 600 034.

2. The Income Tax Officer,
Corporate Ward 5(4),
Room No.403, Aayakar Bhavan, Main Building,
No.121, M.G.Road, Nungambakkam,
Chennai - 600 034. ... Respondents

Writ petition filed under Article 226 of the Constitution of India, praying for the issuance of a writ of certiorarified mandamus calling for the records relating to the impugned proceedings in AABCR3254M/STAY/2009-10 dated 20.01.2017 passed by the second respondent and quash the same as unlawful, without application of mind and further direct the first respondent to dispose of the appeal filed by the petitioner on 27.10.2016 by granting stay of recovery pending disposal of the said appeal before the first respondent.

For Petitioner : Mr.K.Jayachandran

For Respondents : Mrs.Hema Muralikrishnan

O R D E R

1. Issue notice. Mrs.Hema Muralikrishnan, accepts notice on behalf of the respondents. With the consent of counsel for parties, the Writ Petition is taken up for hearing and final disposal.

2.The Writ Petition is directed against the order dated 20.01.2017, whereby, the petitioner's application for stay was rejected.

2.1 To be noted, the petitioner has filed an appeal against the order dated 23.09.2016 passed by respondent no.2, which is pending consideration with respondent no.1 i.e. the Commissioner of Income Tax (Appeals) [in short CIT(A)]. The order dated 23.09.2016, has been passed under Section 147 of the Income Tax Act, 1961, (in short the Act), whereby, exemption under Section 10 B of the Act has been disallowed.

2.2. Record shows that the issue raised in the present Writ Petition pertains to the assessment year 2009-10. The petitioner, as it appears, had claimed exemption under Section 10 B of the Act as also a deduction under Section 2(22)(e) of the Act, in its return filed vis-a-vis, the relevant assessment year.

2.3. The Assessing Officer, via, an order passed on 30.12.2011 under Section 143 (3) of the Act, disallowed both, the exemption under Section 10(B) and, the deduction under Section 2(22)(e) of the Act.

2.4. The petitioner, evidently, had carried the matter in appeal to the CIT(A). The appeal preferred by the petitioner was allowed, vide, order dated 12.12.2013.

2.5. Against the said order, the Revenue filed an appeal with the Income Tax Appellate Tribunal. The appeal preferred by the Revenue, though, was confined to deduction claimed by the petitioner under Section 2(22)(e) of the Act.

2.6. Respondent no.2, however, issued a notice for reopening the assessment under Section 148 of the Act on the ground that the provisions of Section 10 B of the Act enabled an assessee to claim exemption only, if, the return was filed on the due date specified under Section 139(1) of the Act. According to respondent no.2, petitioner had filed its return beyond the due date specified in Section 139 (1) of the Act. Accordingly, respondent no.2 proceeded to disallow the exemption claimed by the petitioner under Section 10 B of the Act.

2.7. Against this order, which was passed on 23.09.2016, as indicated above, an appeal has been preferred by the petitioner, which is pending before respondent no.1.

2.8. It is in these circumstances, that, an application for stay was moved by the petitioner, which was rejected, via, order dated 20.01.2017.

3. Learned counsel for the petitioner submits that the very fact that in the earlier round, the exemption claimed under Section 10 B of the Act had been allowed by CIT (A) against which no appeal was preferred by the Revenue, would demonstrate that the petitioner has a good prima facie case

and therefore, in terms of the Circular dated 29.02.2016, absolute stay ought to have been granted or, in the very least, the minimum amount of disputed tax ought to have been directed to be deposited as condition of stay.

3.1 Learned counsel for the petitioner further submits that respondent no.2, instead, has summarily rejected the application for stay, and therefore, the petitioner has been constrained to move this Court.

4. Mrs.Hema Muralikrishnan, who appears for the respondents, does not dispute the facts set out above. The learned counsel also says that she cannot, but, submit that the Circular dated 29.02.2016 is binding on the Revenue.

5.Having regard to the aforementioned facts, in particular, the fact that in the earlier round the exemption claimed by the petitioner under Section 10 B of the Act was allowed by the CIT (A), against which, the Revenue did not prefer an appeal, I am inclined to agree with the counsel for the petitioner that a conditional order of stay ought to have been passed in the very least. The exemption is sought to be denied only on the ground that the return was not filed on the due date specified under Section 139(1) of the Act.

6. In these circumstances, the operation of the order dated 23.09.2016 is stayed, subject to deposit of 15% of the disputed tax, within a period of four weeks from the date of receipt of a copy of this order.

6.1. Needless to say, any observations made hereinabove will not impact the merits of the appeal pending before respondent No.1.

7. The Writ Petition is disposed of with the aforementioned direction. Consequently, the connected miscellaneous petition is closed. No costs.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

va

To

1. The Commissioner of Income Tax (Appeals)-3,
   Mahatma Gandhi Road,
   Chennai - 600 034.

2. The Income Tax Officer,
   Corporate Ward 5(4),
   Room No.403, Aayakar Bhavan, Main Building,
   No.121, M.G.Road, Nungambakkam,
   Chennai - 600 034.

+1cc to Mr.K.Jayachandran, Advocate, S.R.No.7933
+1cc to Mr.T.Ravi Kumar, Advocate, S.R.No.7922

W.P.No.3093 of 2017
and
W.M.P.No.3006 of 2017

RSY(CO)
CA(09/02/2017)