In the High Court of Judicature at Madras

Dated : 11.9.2017

Coram :

The Honourable Mr.Justice T.S.SIVAGNANAM

Writ Petition No.24309 of 2017 & WMP.Nos.25720 & 25721 of 2017

M/s.S-10 Health Care Solutions
Private Limited, Chennai-34 rep.
by its Chairman Mr.Sridharan Sivan ...Petitioner

Vs

1. The Income Tax Officer,
   Corporate Ward 6(3), Aayakar
   Bhawan, Room No.706, 7th Floor,
   Wanaparathy Block, No.121,
   M.G.Road, Nungambakkam,
   Chennai-34.

2. The Additional Commissioner of
   Income Tax, Corporate Range-6,
   Nungambakkam, Chennai-34.

3. The Commissioner of Income Tax
   (Appeals)-15, Room No.23, 2nd
   Floor, Aayakar Bhavan, Main
   Building, No.121, Mahatma Gandhi
   Road, Nungambakkam, Chennai-34.

4. The Branch Manager, Axis Bank,
   No.79, G.N.Chetty Road, T.Nagar,
   Chennai-17.

5. The Branch Manager, HDFC Bank,
   New No.46/B13, South Boag Road,
   T.Nagar, Chennai-17.

6. The Branch Manager, HDFC Bank,
   No.10, 3rd Cross Street, RA Puram,
   Chennai-28. ...Respondents

PETITION under Article 226 of The Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus to call for the records in Pan AAGCP7986H/ITO CW6 (3)/2017-18 dated 04.9.2017 for the assessment year 2014-15 on the file of the first respondent, quash the same and direct the first respondent not to collect outstanding tax demand pending disposal of the appeal before the third respondent.

For Petitioner : Mr.M.P.Senthil Kumar

For Respondents 1 to 3 : ***Mr.A.P.Srinivas, SPC**

ORDER

Mr.A.P.Srinivas, learned Senior Panel Counsel accepts notice for respondents 1 to 3. Heard both. In view of the order this Court proposes to pass, notice to respondents 4 to 6 is dispensed with and the writ petition itself is taken up for final disposal.

2. The petitioner is before this Court challenging an order passed by the first respondent - the petitioner's Assessing officer on a petition filed by the petitioner for stay of demand of the arrears of income tax for the assessment year 2014-15.

3. The assessment for the said year was completed by order dated 26.12.2016 under Section 143(3) of the Income Tax Act, 1961 and the petitioner was assessed to tax for a total income of Rs.3,71,05,196/-. Against the order of assessment, the petitioner filed an appeal before the third respondent - the Commissioner of Income Tax (Appeals)-15 by appeal petition dated 25.1.2017. Apart from other things in the appeal petition, the first ground raised by the petitioner is by contending that the Additional Commissioner of Income Tax - the second respondent herein has not given due opportunity to the petitioner to be heard before passing the directions under Section 144A of the said Act, which is prejudicial to the interests of the petitioner.

4. The learned counsel for the petitioner has drawn the attention of this Court to paragraph 3.3 of the assessment order dated 26.12.2016 wherein it has been stated that a reference under Section 144A of the said Act was solicited to the Additional Commissioner of Income Tax, Corporate Range-6, Chennai seeking directions/guidelines on the issue of share premium received by the company and that the Additional Commissioner issued directions vide letter dated 23.12.2016 forming the basis of the assessment dated 26.12.2016, which is the subject matter of appeal before the Commissioner of Income Tax (Appeals).

5. It is further submitted by the learned counsel for the petitioner that an opportunity ought to have been granted to the petitioner before a direction was issued under Section 144A of the said Act. Since the Assessing Officer issued a notice of demand under Section 156 of the said Act, the petitioner filed

an application for stay before the Assessing Officer.

6. A copy of the stay petition along with written submissions were placed in the typed set of papers, from which, it is seen that the petitioner made elaborate submissions on factual and legal issues and also enclosed certain decisions, which they seek to rely upon. The first respondent, by the impugned order, stated that the petitioner did not make 20% payment as per circular No.1914 dated 31.7.2017 to consider their case for the grant of stay of balance demand and that they have not submitted any valid reason for not being able to pay the 20% of the arrears and the financials of the petitioner do not highlight any financial difficulty.

7. With regard to the case laws relied upon by the petitioner, the first respondent stated that those are all decisions rendered by Courts in writ cases and that this Court has not decided any substantial question of law.

8. The said observation with regard to the effect of decisions of the High Court as well as the Hon'ble Supreme Court is incorrect. The first respondent ought to have seen what was the ratio decidendi in the judgment and the first respondent is not justified in brushing aside the judgment stating that there were in writ proceedings. The observations made go contrary to the settled law of precedents and as to how a judgment should be made applicable to the facts and circumstances of a particular case. Be that as it may, it is to be seen as to whether the petitioner can be granted any indulgence at this juncture.

9. The learned counsel for the petitioner submits that the appeal filed before the third respondent has been taken up for hearing and that the first hearing has been completed on 06.9.2017. It is his further submission that the third respondent opined that a remand report is required to be called for in the proceedings more particularly in the light of the fact that the petitioner raised a contention that they did not have any opportunity before the order was passed under Section 144A of the said Act, which is prejudicial to the interests of the petitioner.

10. Though the first respondent has referred to a circular of the Central Board of Direct Taxes, in my opinion, while granting an order of interim stay, the Court or the Appropriate Authority is entitled to take note of the factual and legal submissions made and examine as to whether a prima facie case has been made out by the appellant/assessee for grant of interim order. I find in the impugned proceedings that the first respondent has not gone into the aspect as to whether the petitioner has made out a prima facie case for grant of interim order and this being a primordial requirement, failure to consider the said aspect

would render the impugned order liable for interference.

11. Considering the contentions raised by the petitioner before the Commissioner of Income Tax (Appeals) and taking note of the fact that hearing of the appeal has already commenced, there will be an order of interim stay of all further proceedings pursuant to the impugned order dated 04.9.2017 subject to the condition that the petitioner pays ***10%** of the income tax demanded i.e ***10%** of Rs.1,58,18,050/-. It is stated that pursuant to the attachment of the petitioner's bank account, certain sums have already been realized by the Department. If that be so, then, whatever the amount that has already been realized shall be given credit to while arriving at the balance payable by the petitioner for complying with the above conditional order. The petitioner is directed to effect payment of the amount within a period of 90 days from the date of receipt of a copy of this order. If the petitioner fails to pay the said amount within the time stipulated, it is open to the first respondent to proceed further in accordance with law. As it has already been stated that the Commissioner of Income Tax (Appeals) has commenced hearing of the appeal petition, the appeal petition shall be finally disposed of as expeditiously as possible by following the appropriate legal procedure.

12. The writ petition is disposed of with the above directions. No costs. Consequently, the above WMPs are closed.

Sd/-
Asst.Registrar (CS III)

***Amended as per order**
of this Court dated 14/9/17
made in WP.No.24309/17
-s/d-
Assistant Registrar(CSIII)
dt:18/09/2017

/true copy/

Sub Asst. Registrar

To
1. The Income Tax Officer-II,
Corporate Ward 6(3),
Aayakar Bhawan, Room
No.706, 7th Floor, Wanaparathy Block,
No.121, M.G.Road, Chennai-34.

To be Substituted in
the place of order
despatched on 14/09/17

2. The Additional Commissioner of Income Tax,
Corporate Range-6, Nungambakkam, Chennai-34.

3. The Commissioner of Income Tax (Appeals)-15,
Room No.23, 2nd Floor, Aayakar Bhavan, Main Building,
No.121, Mahatma Gandhi Road, Nungambakkam, Chennai-34.

+1cc to Mr.G.Baskar,Advocate sr.65552
+2cc to A.P.Srinivas,Advocate sr.66687 & 67222 (15/09/2017)

WP.No.24309 of 2017 &
WMP.Nos.25720 & 25721 of 2017

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