

In the High Court of Judicature at Madras

Dated : 26.10.2017

Coram :

The Honourable Mr.Justice T.S.SIVAGNANAM

Writ Petition Nos.27209 & 27210 of 2017 &  
WMP.No.29079 of 2017

Kalaigarnar TV Private Limited, rep.  
by its Director Mr.P.Amirtham Vs ...Petitioner in both wp`s

1.The Principal Commissioner of  
Income Tax-10, Room No.410,  
4th Floor, Main Building, No.121,  
M.G.Road, Nungambakkam,  
Chennai-34.

2.The Assistant Commissioner of  
Income Tax, Non Corporate Circle  
20(1), M.G.Road, Nungambakkam,  
Chennai-34.

3.The Commissioner of Income Tax  
(Appeals) - 14, Room No.227,  
II Floor, M.G.Road, Nungambakkam,  
Chennai-34.

...Respondents in both wp`s

PETITIONS under Article 226 of The Constitution of India  
praying for the issuance of

(i) a Writ of Certiorari and Mandamus to call for the  
records of the first respondent, quash the impugned order  
bearing F.No.10601(4)/2016-17 PCIT - 10 dated 27.3.2017 issued  
by the first respondent and direct the respondents not to  
enforce the arrears of demand against the petitioner pending  
disposal of appeals before the third respondent (WP.No.27909 of  
2017); and

(ii) a Writ of Mandamus directing the third respondent to  
dispose of the appeals bearing ITA.Nos.24/2014-15, 98/2015-16  
and 83/2016-17 for the assessment years 2011-12, 2012-13 and  
2013-14 respectively at the earliest (WP.No.27910 of 2017).

For Petitioner : Mr.Sandeep Bagmar

For Respondents : Mr.J.Narayanawamy

COMMON ORDER

Mr.J.Narayanaswamy, learned Standing Counsel accepts notice for the respondents. Heard both.

2. The petitioner, which is a private limited company incorporated under the Companies Act, 1956, is engaged in the business of broadcasting of Tamil channels through television.

3. In W.P.No.27209 of 2017, the petitioner challenges an order passed by the first respondent dated 27.3.2017, by which, the first respondent, while rejecting the petitioner's prayer for stay of the entire demand as quantified by the Assessing Officer in the assessment orders for the years 2011-12 and 2012-13, accepted the offer given by the petitioner to pay at the rate of Rs.50 lakhs per month till 15% of the demand is collected or the first appeal is decided, whichever is earlier.

4. As against the assessment orders for those two years, the petitioner filed appeals before the third respondent. It appears that the appeal petitions were to be heard by the third respondent and the first hearing notice was issued on 14.2.2017 for three assessment years namely 2011-12 to 2013-14 and the petitioner is stated to have appeared along with their authorized representative on 23.2.2017, on which date, the case was adjourned and till date, no fresh date of hearing has been assigned. Therefore, in W.P.No. 27210 of 2017, the petitioner has sought for a direction to the third respondent to dispose of the appeals pending on his file for the three assessment years 2011-12 to 2013-14.

5. The learned counsel for the petitioner would submit that the impugned order passed by the first respondent is erroneous, since the first respondent did not consider the three cardinal principles, which are required to be taken note of while passing an interim order namely

- (i) prima facie case
- (ii) balance of convenience and
- (iii) irreparable hardship.

6. On merits, the learned counsel for the petitioner would submit that they had received a loan from the subsidiary company - M/s.Anjugam Enterprises to the tune of Rs.83 Crores and suffered taxes at the hands of the subsidiary company, which, in turn, had received the said amount from M/s.Sapphire Media & Infrastructure Limited, at whose hands also, they suffered tax and that therefore, once again, the same amount cannot be taxed at the hands of the petitioner. According to the learned counsel, the petitioner received trade advances to the tune of Rs.129 Crores from three companies and those are towards advertisements and as and when the accrual takes place and

invoices are raised, tax is being paid and out of Rs.129 crores, a sum of Rs.125 Crores has been shown in the return of income filed by the petitioner. It is further submitted that so far as the assessment year 2008-09 is concerned, the petitioner is entitled to a refund of Rs.12,90,960/- and this has not been adjusted by the Department.

7. The assessments for the years 2009-10 and 2010-11 were set aside by the Income Tax Appellate Tribunal and the matters have been remanded to the second respondent - Assessing Officer. Therefore, it is also submitted that these amounts have been eschewed from the total demand and this aspect of the matter was not considered by the first respondent.

8. However, the learned Standing Counsel for the Revenue would contend that the factual issues cannot be adjudicated by this Court at this juncture and those are all issues, which have to be agitated before the Appellate Authority. The learned Standing Counsel has referred to certain observations made by the Assessing Officer to support their stand that the transactions effected by the petitioner are, in effect, circular transactions.

9. With regard to the prayer sought for by the petitioner to direct the appeals to be disposed of at an early date, the learned Standing Counsel has produced written instructions given by the third respondent dated 24.10.2017 wherein he stated that he would require at least six months to dispose of the appeals i.e. at least till the end of April 2018.

10. After carefully considering the submissions made on either side and upon perusing the materials placed on record, this Court finds that the contentions advanced before this Court in the first writ petition were never pleaded before the first respondent while arguing the stay petition. In fact, the assessee's submissions were extracted in the impugned order, from which, it is seen that the assessee, in unequivocal terms, agreed that they are prepared to pay Rs.50 lakhs by 25th of every month till the appeal before the Commissioner is decided. The assessee was confident that the appeal will be decided in their favour and that the tax paid will be refunded to them. These submissions were taken note of by the first respondent and an order to the said effect was passed permitting the petitioner to pay the arrears in monthly instalments of Rs.50 lakhs till 15% of the demand is collected. The Assessing Officer was directed to withdraw the attachment of the assessee's bank accounts and debtors attachments. However, the petitioner did not keep up their commitment and they were able to pay only a sum of Rs.3.5 Crores.

11. After the impugned order was passed, which is based on the concession given by the first respondent, once again, the petitioner approached the first respondent by way of representation dated 05.7.2017 expressing their financial difficulties and seeking stay of the collection of taxes. This representation is now pending. Subsequently, another representation has been given on 20.9.2017 seeking to pay Rs.20 lakhs per month instead of Rs.50 lakhs. However, this representation dated 20.9.2017 has been rejected by proceedings dated 03.10.2017. But, the proceedings dated 03.10.2017 has not been challenged by the petitioner.

12. Thus, this Court finds that when the petitioner had agreed to comply with the payment of disputed tax at the rate of Rs.50 lakhs per month, they are bound to comply with such an undertaking. Now arguing before this Court pleading their financial incapacity or requesting this Court to examine the merits of the assessment is unsustainable, as this Court finds that there is no error in the impugned order.

13. Accordingly, W.P.No.27209 of 2017 is dismissed. No costs. Consequently, the connected WMP is also dismissed. However, the dismissal of the writ petition will not preclude the petitioner from approaching the first respondent with a better offer and it is for the first respondent to consider the same and proceed in accordance with law.

14. With regard to the time required for the disposal of the appeals, bearing in mind the request made by the third respondent vide letter dated 24.10.2017, the third respondent is directed to expedite disposal of the appeals preferably on or before 15.3.2018. W.P.No.29210 of 2017 is disposed of in the above terms. No costs.

sd/-

Assistant Registrar

/True Copy/

Sub Assistant Registrar

To

1.The Principal Commissioner of Income Tax-10, Room No.410, 4th Floor, Main Building, No.121, M.G.Road, Nungambakkam, Chennai-34.

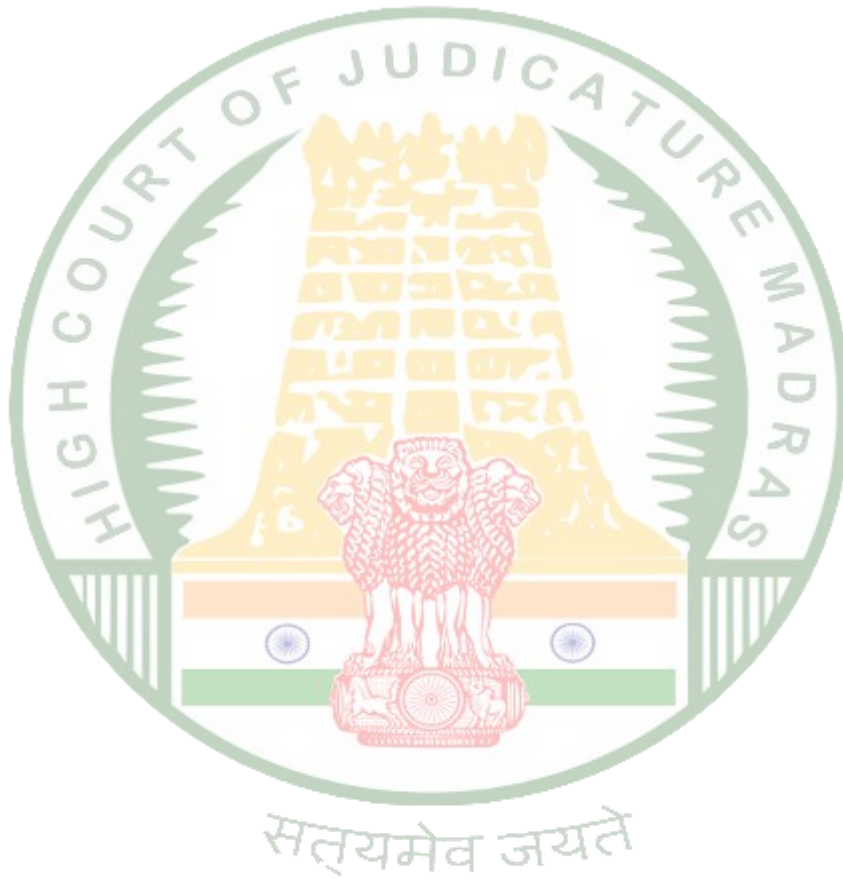
2.The Assistant Commissioner of Income Tax, Non Corporate Circle 20(1), M.G.Road, Nungambakkam, Chennai-34.

3.The Commissioner of Income Tax(Appeals) - 14, Room No.227, II Floor, M.G.Road, Nungambakkam, Chennai-34.

+1 CC Mr.sandeep Begmar Advocate SR.No.75584  
+1 CC Mr.Narayanasamy Advocate SR.No.76623

MG (CO)  
EGR 17/11/2017

WP.Nos.27209 & 27210 of 2017  
and WMP.No.29079 of 2017



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