IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.07.2017

CORAM

THE HONOURABLE Mr. JUSTICE T.S.SIVAGNANAM

W.P.No.17886 of 2017
and
W.M.P.No.19416 of 2017

M/s.GMV Projects and Systems,
7/C4, Twin Rose Apartmensts,
68, East Coast Road,
Thiruvanmiyoor,
Chennai 600 041
Represented by its Partner .. Petitioner

..Vs..

1. Assistant Commissioner of Income Tax
   Non Corporate Circle 15 (1)
   Chennai 600 034.

2. The Branch Manager,
   Citi Bank,
   2, Club House Road,
   Chennai. .. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus to call for the records of the first respondent in his proceedings leading to the issuance of Order under section 226 (3) vide PAN:AAGFG1503J dated 28.02.2017, quash the same and direct the Respondent not to take coercive action until the disposal of Appeal.

For Petitioner : Mr.S.Sathyanarayanan

For Respondents : Mr.A.P.Srinivas,
Senior Panel Counsel.

ORDER

Heard Mr.S.Sathyanarayanan, learned counsel appearing for the petitioner and Mr.A.P.Srinivas, learned Senior Panel Counsel accepting notice on behalf of the respondents. With the consent on either side, the writ petition itself is taken up for disposal.

2. The petitioner has filed this Writ Petition challenging the order passed by the first respondent dated 28.02.2017 received by the petitioner on 03.03.2017 in a stay application filed by the petitioner praying for stay of collection of demand in respect of the assessment for the year 2014-15. The first respondent has stated that mere pendency of an appeal before the Commissioner of Income Tax (Appeals) against the assessment order is not a valid ground for stay of collection demand as per CBDT directives and circular. Further it has been stated that as per the recent CBDT circular, the petitioner is directed to pay 15% of the demand raised in assessment before the petitioner wishes to request for the stay of demand till the disposal of the appeal before the Commissioner of Income Tax (Appeals).

3. In my considered view, the impugned order is a classical case of non-application of mind and abdication of the powers of the Assessing Officer. Admittedly, the petitioner has a right to approach the Assessing Officer praying for stay of the demand pending disposal of the appeal by the Commissioner of Income Tax (Appeals). Therefore, when the Assessing Officer considers the Stay Petition, he has to consider whether the petitioner/Assessee has made out a prima facie case for grant of stay. It may be true that CBDT has issued certain instructions on 02.02.1993 in instruction No.1914 and in office memorandum dated 29.02.2016. In my view these instructions and directives can be a guideline for the Assessing Officer while considering the Stay Petition. The instructions cannot take away the discretionary power of the Assessing Officer and the purport of issuing such instruction is to ensure that the Assessing Officer adopt an uniform approach rather than act in a whimsical and arbitrary manner. Thus the foremost point that the Assessing Officer has to consider is whether the assesse has made out a prima facie case for grant of an interim order. The petitioner/assessee filed the stay petition dated 20.02.2017 stating that the notice dated 05.12.2016 calling for the production of vouchers and bills pertaining to the business promotion expenses and overseas transport expenses and to appear for personal hearing on 09.12.2016 was received only on

23.12.2016 due to natural calamity, viz., Vardha Cyclone. Further it was stated that the notice was sent to a wrong address and the first respondent was constrained to pass the assessment order disallowing the expenses as the assessment was likely to become time barred and no opportunity was given to the petitioner to submit the information called for. Further it was stated they through their authorised representatives had earlier furnished all the ledger accounts and details as required by the Assessing Officer from time to time. Further it was stated that aggrieved by the assessment order, they have preferred an appeal before the Commissioner of Income Tax (Appeals)-Range 15 on 18.01.2017.

4. With these averments, the petitioner has sought for a complete stay of the demand till the disposal of the appeal and prayed for giving an opportunity of personal hearing before passing an order and also requested to send all notices and communications to the address given in the said stay petition. Unfortunately, the first respondent did not take note of any of the submission made by the petitioner including the request for a personal hearing. The first respondent has not denied or disputed the averments made by the petitioner that the notice dated 05.12.2016 was received by them only on 23.12.2016 and it was sent to wrong address. If this averment was wrong, then the first respondent should have dealt with the same and should not have mechanically passed the impugned order by observing that a mere pendency of an appeal is not a valid ground for stay as per the directives of the CBDT. On perusal of the order of assessment, it is seen that the respondent accepted the fact that the authorised representative of the petitioner appeared before him on various dates and filed the details called for. However, in the assessment order the first respondent has not stated as to when the notice issued by him dated 05.12.2016 was received by the assessee/petitioner. Therefore, the assessment order being an exparte order, the correctness of which will be decided by Commissioner of Income Tax (Appeals). Thus, taking note of all the above facts, this is a fit case where the entire demand should remain stays till the appeal is disposed of by the Commissioner of Income Tax (Appeals)-Range 15.

5. In the light of the above discussion, the writ petition is allowed, the impugned order is quashed and there will be an order of stay of collection of demand pursuant to the order of assessment dated 20.12.2016 for the assessment year 2014-15 till the disposal of the appeal filed by the petitioner before the Commissioner of Income Tax (Appeals)-Range 15. No costs.

Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

rkp

To

1. Assistant Commissioner of Income Tax
   Non Corporate Circle 15 (1)
   Chennai 600 034.

2. The Branch Manager,
   Citi Bank,
   2, Club House Road,
   Chennai.

+1cc to M/s/S.Sathiyanarayan,Advocate,S.R.No.49191

W.P.No.17886 of 2017
and
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GJ
CU(27/07/2017)