IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.11.2017

CORAM

THE HONOURABLE Mr.JUSTICE T.S.SIVAGNANAM

W.P.No.28294of 2017 and
WM.P.No.30411 of 2017

T.R.Shanmugagsundaram ... Petitioner

Vs

1. Deputy Commissioner of Income Tax,
   Central Circle- I
   Race Course Road,
   Coimbatore - 641 018.

2. The Commissioner of Income Tax (Appeals) - 19,
   Nungambakkam High Road,
   Chennai - 600 034. ... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari calling for the records relating to Order passed by the 1st respondent in F.No.AHFPR3844M/C C-1/CBE/2015-16, dated 25.10.2017 and quash the same.

For Petitioner : Mr.Niranjan Rajagopalan
For Mr.G.R.Associates

For Respondents : Mr.A.P.Srinivas

ORDER

Heard Mr.Niranjan Rajagopalan, learned counsel appearing for the petitioner and Mr.A.P.Srinivas, learned Senior Panel Counsel for the respondents. Since the first respondent has given written instructions to the learned Senior Panel Counsel for the respondent, the writ petition is taken up for disposal.

2.The petitioner is aggrieved by rejection of his stay petition vide order dated 25.10.2017 under Section 220(6) of the Income Tax Act, 1961. The respondent has referred to the instructions given by the Central Board of Direct Taxes, as modified vide Memorandum dated 31.07.2017, has rejected the said petition on the ground that the petitioner has not paid 20% of the disputed tax. The modified instructions given by the

Director dated 31.07.2017 has been issued in order to streamline the process of grant of stay and standardize the quantum of lump sum payment required to be made by the assessee as pre-condition for stay of demand disputed before CIT (A), two contingencies have been contemplated by the Board and following direction has been issued:

> "(A) In case where the outstanding demand is disputed before CIT(A), the assessing officer shall grant stay of demand till disposal of first appeal on payment of 20% of the disputed demand, unless the case falls in the category discussed in para (B) hereunder.
>
> (B) In a situation where.
>
> (a) the assessing officer is of the view that the nature of addition resulting in the disputed demand is such that payment of a lump sum amount higher than 20% is warranted (e.g. in a case where addition on the same issue has been confirmed by appellate authorities in earlier years or the decision of the Supreme Court or jurisdictional High Court is in favour of Revenue or addition is based on credible evidence collected in a search or survey operation etc.) or
>
> (b) the assessing officer is of the view that the nature of addition resulting in the disputed demand is such that payment of a lump sum amount lower than 20% is warranted (e.g. In a case where addition on the same issue has been deleted by appellate authorities in earlier years or the decision of the Supreme Court or jurisdictional High Court is in favour of the assessee etc.)
>
> The assessing officer shall refer the matter to the administrative Pr.CIT/CIT, who after considering all relevant facts shall decide the quantum/proportion of demand to be paid y the assessee as lump sum payment for granting a stay of the balance demand."

3.The 1st respondent has referred to Clause (A) of Para 4 of the instruction and stated that the petitioner having not remitted 20% of the disputed tax is not entitled for grant of stay. It may be relevant to note that Clause (B) contemplates of situation where the Assessing Officer is of the view that the nature of addition resulting in the disputed demand warrants payment of more than 20%. The other situation contemplated is where the nature of addition resulting in a disputed demand warrants payment of lower than 20%. The case on hand is one of block assessment as a result of search and seizure operations conducted in the business premises and other places of the petitioner. The nature of transaction appears to be real estate transactions and the assessments are high pitched assessments.

4.From the written instructions given by the 1st respondent dated 07.11.2017, it is seen that as against the total demand of Rs.24,23,59,070/-, sum of Rs.63,83,854/- has been recovered. Apart from that, a sum of Rs.95 lakhs, which is lying in fixed deposit, has been retained by the 1st respondent. Considering the facts of the case and that already a sum of Rs.63,83,854/- has been recovered and Rs.95 lakhs is available with the Department in the form of fixed deposit, the following order would meet the ends of justice, that is to say, protect the interest of the Revenue as well as to give temporary reprieve to the assessee pending disposal of the appeal.

5.Accordingly, the Writ Petition is disposed of, with the slight modification to the impugned order (i) by permitting the 1st respondent to encash the fixed deposit of Rs.95 lakhs together with interest accrued till the date of encashment and reckon the payment towards the disputed tax; (ii) the petitioner is directed to furnish immovable property security worth Rs.2 Crores and such property/properties shall be free from encumbrance and the original documents should be deposited and appropriate documents should be executed in favour of the Department securing the interest of Revenue and the petitioner providing immovable property security for sum of Rs.2 Crores, further demand of tax and penalty as claimed in the assessment orders shall remain stayed. It is represented by the learned counsel for the petitioner that the fixed deposits are in the names of the father-in-law and mother-in-law of the petitioner and the petitioner will make appropriate arrangements for them to give their No objection certificate for encashment of those fixed deposits. The above direction shall be complied with within a period of three weeks from the date of receipt of copy of this order. However, if the petitioner fails to fulfill the second condition in providing unencumbered immovable property security to the tune of Rs.2 Crores, the order of stay will stand automatically vacated. The 2nd respondent can consider disposal of the appeal at an early date by taking into consideration that the petitioner is an individual assessee and the assessments are high pitched. No costs. Consequently, connected miscellaneous petitions are closed.

s/d-
Assistant Registrar(CS-V)

True Copy

Sub-Assistant Registrar

Sgl

To

1.Deputy Commissioner of Income Tax,
Central Circle- I
Race Course Road,
Coimbatore - 641 018.

2.The Commissioner of Income Tax (Appeals) - 19,
Nungambakkam High Road,
Chennai - 600 034.

+1 CC to Ms.A.P. Srinivas, Advocate sr 80412.

W.P.No.28294 of 2017

RR(CO)
SP(08/12/2017)