In the High Court of Judicature at Madras

Dated : 09.11.2017

Coram :

The Honourable Mr.Justice T.S.SIVAGNANAM

Writ Petition Nos.28483 & 28484 of 2017
& WMP.Nos.30598 & 30599 of 2017

M/s.Spaarkon Trading Chennai (P) Ltd., rep.by its Director Mr.Srinivas Ramachandran, Coimbatore-14. ...Petitioner

Vs

1.The Deputy Commissioner of Income Tax, Corporate Circle 6(2), 7th Floor, New Block, Room No.705, No.121, Mahatma Gandhi Road, Nungambakkam, Chennai-34.

2.The Principal Commissioner of Income Tax-I, No.121, Mahatma Gandhi Road, Nungambakkam, Chennai-34.

3.The Assistant Commissioner of Income Tax (OSD), II Floor, New Block, Room No.209, 121, Mahatma Gandhi Road, Nungambakkam, Chennai-34. ...Respondents

PETITIONS under Article 226 of The Constitution of India praying for the issuance of a Writ of Mandamus directing the respondents not to take any coercive steps as against the petitioner until the regular appointment of the Appellate Authority being made and decide the issue finally.

For Petitioner : Mr.V.T.Gopalan, SC for Mr.S.Ashok Kumar

For Respondents : Mr.A.P.Srinivas, SSC

COMMON ORDER

Mr.A.P.Srinivas, learned Senior Standing Counsel accepts notice for the respondents. Heard both. By consent, the writ petitions are taken up for joint disposal.

2. The petitioner seeks a direction to the respondents not to take any coercive steps against them until regular appointment of the Appellate Authority is made and the appeal petitions filed by the petitioner against the high pitched assessments for the years 2012-13 and 2013-14 are decided by the Appellate Authority.

3. The Assessing Officer completed the assessments for the year 2012-13 by order dated 27.3.2015 by assessing the total income of the petitioner at Rs.63,68,26,070/- and for the year 2013-14 by order dated 30.3.2016 by assessing the total income of the petitioner at Rs.2,48,08,400/-. Aggrieved by such assessments, the petitioner preferred appeals before the Commissioner of Income Tax (Appeals) along with stay petitions.

4. In so far as the appeal filed as against the assessment order for the year 2012-13, there is a delay of 312 days in filing the appeal. As against the assessment order for the year 2013-14, an appeal has been filed in time and the same is now pending before the Appellate Authority. It is the submission of the learned Senior Counsel for the petitioner that the petitioner has been receiving phone calls from the Income Tax Department calling upon them to make payment of the tax demanded in the assessment orders for both the years, failing which, they have been threatened with dire consequences and the appeals filed by the assessee having not been taken up for disposal nor the stay petitions were taken up, the respondent Department cannot compel the petitioner to pay the tax.

5. The learned Senior Counsel appearing for the petitioner submits that though the appeals have been presented as early as 11.3.2016 and 28.4.2016 respectively, one of which was filed along with a petition for condonation of delay and the other appeal has been filed within the period of limitation, till date, the petitioner has not received any notice from the Appellate Authority even in the stay petitions, which they had filed. He would further submit that in cases of high pitched assessment, appropriate protection should be granted to the assessee and while keeping the appeal petitions pending, simultaneously coercive action should not be initiated for recovery of tax as assessed by the Assessing Officer. In this regard, the learned Senior Counsel has placed reliance on the decision of this Court in the case of N.Jegatheesan

Vs. DCIT [reported in (2016) 388 ITR 410].

6. In turn, the learned Senior Standing Counsel for the Revenue would submit that if an appeal is pending, the Appellate Authority may be directed to consider the stay petition at the first instance and appropriate directions may be issued by this Court in this regard.

7. Considering the factual position as set out in the preceding paragraphs, it will be appropriate for this Court to issue necessary directions to the Appellate Authority to dispose of the stay petitions at the first instance.

8. It is to be pointed out that in one of the appeals, there is a delay of 312 days in filing the appeal. In the petition filed for condonation of delay, the petitioner stated that one Mr.B.Kannan was fully in charge of day-to-day activities of the company. As his father was hospitalized, he had to spend considerable time with his father and in spite of his best efforts, his father passed away. This had terrible psychological effect on him and he was unable to attend his normal duties for sometime. Therefore, the petitioner sought for condonation of delay. The death certificate of the director's father, who passed away on 27.7.2015, has been enclosed in the typed set of papers.

9. Thus, prima facie, it appears that reasons have been given by the petitioner for not preferring one of the appeals in time as against the order of assessment for the year 2012-13. However, in so far as the assessment year 2013-14 is concerned, the appeal has been presented in time. Therefore, the Appellate Authority can exercise his discretion and entertain both the appeals. Considering the fact that the stay petitions are pending since March and April 2016 respectively, the Appellate Authority can take a decision in the stay petitions at the first instance.

10. In the light of the above discussions, the writ petitions are disposed of with a direction to the Appellate Authority to entertain the appeal petitions and consider the stay petitions in both the appeals and after affording an opportunity of personal hearing to the authorized representative of the petitioner, pass a speaking order on merits and in accordance with law, within a period of twelve weeks from the date of receipt of a copy of this order. Till the stay petitions are heard and finally

decided, the respondents shall not initiate any coercive action against the petitioner for recovery of tax and penalty as assessed and pursuant to both the assessment orders. No costs. Consequently, the connected WMPs are closed.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

RS

To

1. The Deputy Commissioner of Income Tax, Corporate Circle 6(2), 7th Floor,New Block, Room No.705, No.121, Mahatma Gandhi Road,Nungambakkam,
Chennai-34.
2. The Principal Commissioner of Income Tax-I, No.121, Mahatma Gandhi
Road, Nungambakkam, Chennai-34.
3. The Assistant Commissioner of Income Tax (OSD), II Floor, New Block,Room No.209, 121, Mahatma Gandhi Road, Nungambakkam, Chennai-34.

+1cc to Mr.A.P.Srinivasan, Advocate, S.R.No.79654
+3cc to Mr.S.Ashok kumar, Advocate, S.R.No.79644

WP.Nos.28483 & 28484 of 2017&
WMP.Nos.30598 & 30599 of 2017

RRK(28/11/2017)