In the High Court of Judicature at Madras

Dated : 16.11.2017

Coram :

The Honourable Mr.Justice T.S.SIVAGNANAM

Writ Petition No.29350 of 2017 & WMP.Nos.31612 to 31614 of 2017

J.Srinivasan ...Petitioner

Vs

1.The Commissioner of Income Tax
(Appeals)-19, Aayakar Bhavan,
M.G.Road, Nungambakkam,
Chennai-34.

2.The Principal Commissioner of
Income Tax, Central-1, Chennai,
M.G.Road, Nungambakkam,
Chennai-34.

3.The Assistant Commissioner of
Income Tax, Central Circle 3 (2),
Chennai, M.G.Road, Nungambakkam,
Chennai-34.

4.The Tax Recovery Officer, Central-1,
No.46, Nungambakkam High Road,
Chennai-34. ...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 on the file of the first respondent in ITA Nos.206 to 212/17-18/CIT(A)-19 passing the order dated 12.10.2017 rejecting the stay petitions filed by the petitioner for stay of demand for the assessment years 2009-10 to 2015-16; quash the same as illegal, arbitrary and devoid of merit and consequentially quash the order of the second respondent dated 30.6.2017 in C.No.1571/PCIT/C-1/24 to 30/16-17 and direct the respondent to grant stay of demand pending disposal of the appeals before the first respondent.

For Petitioner : Mr.R.Sivaraman

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

ORDER

Mr.A.P.Srinivas, learned Senior Standing Counsel accepts notice for the respondents. Heard both. By consent, the writ petition itself is taken up for final disposal.

2. The petitioner is aggrieved by a communication sent by the first respondent dated 12.10.2017; so also the order passed by the second respondent dated 30.6.2017.

3. The petitioner preferred an appeal before the first respondent against the orders passed by the third respondent for the assessment years 2009-10 to 2015-16. Initially, when the appeals were filed before the first respondent, it appears that the petitioner did not file petitions for stay. However, the petitioner thought fit to approach the third respondent - his Assessing Officer and filed petitions dated 06.2.2017 to keep the demands in abeyance. The third respondent passed an order on 07.2.2017 directing the petitioner to pay 15% of the outstanding demand for the relevant assessment years, submit proof of payment and give an undertaking to cooperate in the early disposal of the appeals. In the order dated 07.2.2017, the third respondent imposed other conditions also.

4. The petitioner's case is that he was unable to comply with the conditions imposed in the order dated 07.2.2017 and instead of challenging the said order, the petitioner thought fit to file petitions dated 13.2.2017 before the Joint Commissioner of Income Tax. In the petitions dated 13.2.2017, the petitioner prayed for stay of the demand pertaining to the relevant assessment years till the disposal of the appeals by the first respondent. The Additional Commissioner of Income Tax afforded an opportunity of personal hearing to the petitioner and after taking note of the submissions made by the petitioner in the stay petitions, he pointed out that the Central Board of Direct Taxes, in Instruction No.1914 dated 21.3.1996, as revised on 29.2.2016, streamlined the process of stay of demand till the disposal of the appeals before the Commissioner of Income Tax (Appeals) and that the assessee, as per the guidelines, having not paid 15% of the disputed demands, it is not possible to accede to the request of the assessee for stay of collection of demands and accordingly, rejected the stay petitions by order dated 08.3.2017.

5. Once again, the petitioner did not challenge the order passed by the Additional Commissioner of Income Tax. However, he filed separate petitions dated 13.3.2017 before the Principal Commissioner of Income Tax, Central-1 namely the second respondent herein for each of the assessment years seeking to

keep the demands in abeyance till the disposal of the appeals before the first respondent. The second respondent, by order dated 30.6.2017, opined that the petitioner needs to pay 15% of the demands in July 2017 for being entitled to grant of stay. Yet again, the petitioner did not question the order dated 30.6.2017. In the interregnum, since the petitioner's bank accounts were attached, he approached the second respondent by way of a petition dated 08.9.2017, received in the office of the second respondent on 27.9.2017, requesting for lifting of attachment. This petition was rejected by the second respondent by order dated 06.10.2017. As usual, the petitioner did not question that order also.

6. Even prior to the request for lifting of attachment dated 08.9.2017, the petitioner filed petitions on 03.8.2017 before the first respondent for grant of stay of the demand for the relevant assessment years. On a perusal of the petitions dated 03.8.2017, it is seen that the petitioner canvassed the merits of the matter and also mentioned about the various orders passed by the Authorities rejecting his earlier requests. The petitioner also relied upon the decision of this Court in the case of Paulsons Litho Works Vs. ITO & Others [reported in (1994) 208 ITR 676] in support of his contention that the first respondent has necessary powers to deal with and pass orders on the petitions for stay filed where the Appellate Authority is satisfied that the very object of the appeals would be rendered nugatory or frustrated, if interim orders of stay as prayed for were not granted. The petitioner also relied upon the decisions of the Delhi High Court in the case of Soul Vs. DCIT [reported in (2010) 323 ITR 305] wherein the Delhi High Court considered the effect of Instruction No.1914 dated 02.12.1993, which supersedes Instruction No.96 dated 21.8.1969, which provided that the demand should be stayed in exceptional circumstances where the assessment orders appear to be unreasonably high pitched or where genuine hardship is likely to be caused to the assessee.

7. After making the above submissions, the petitioner requested that the Assessing Officer might be directed to grant stay of recovery of demand and made a further prayer to permit him to pay 5% of the total outstanding demand amounting to Rs.1,46,76,920/- in monthly instalments of Rs.1 lakh. The petitioner also prayed for the early hearing of the appeals. Those petitions were not entertained by the first respondent and an order to that effect was passed on 12.10.2017, which is impugned in this writ petition.

8. Paragraph 2 of the impugned order would be relevant, as the first respondent expressed his opinion as to why he was not able to act upon the petitions filed by the petitioner dated

03.8.2017. On a reading of paragraph 2 of the impugned order, it appears that the first respondent was largely guided by the penultimate paragraph in the petitions dated 03.8.2017 wherein the petitioner made a prayer for grant of stay and also sought permission for payment in instalments. Considering this as an administrative act, the first respondent held that he, being a Judicial Authority, is empowered to adjudicate the grounds of appeal and that he is not an Administrative Authority, before whom, the petitions can be moved seeking stay of demands.

9. On a prima facie reading of paragraph 2 of the impugned order, one would get an impression that the first respondent stated that he has no power to entertain the stay petitions. However, on a closer reading of the said paragraph, it reveals that the first respondent was considering the request made by the petitioner to pay 5% of the demands in monthly instalments of Rs.1 lakh. Therefore, the observation contained in paragraph 2 of the impugned order cannot be construed as if the first respondent held that he has no power to grant stay. This would be clear on reading the subsequent sentences, since the first respondent opined that the petitioner had not filed stay petitions when he filed the appeals nor filed any additional grounds of appeal seeking stay of the demands or any other specific relief. Therefore, the first respondent further opined that the petitions dated 03.8.2017 cannot be acted upon.

10. The learned counsel for the petitioner, by relying upon the decision in Paulsons Litho Works, would contend that the Commissioner of Income Tax (Appeals) has necessary powers to deal with and pass orders on the stay petitions.

11. As observed earlier, the first respondent has not come to a conclusion that the petitions for stay are not maintainable before him. But, what appears to have passed in his mind is that he cannot act as an Administrative Authority and permit payment in instalments. Therefore, the petitioner is not justified in stating that the first respondent held that he had no power to grant stay.

12. In so far as the observation that the petitioner had not filed stay petitions along with the original appeals is concerned, there can be no estoppal in this regard, as the petitioner would be entitled to move petitions for stay pending disposal of the appeals before the Appellate Authority. That apart, the first respondent stated that the petitioner had not filed additional grounds. This finding appears to be incorrect because in the stay petitions dated 03.8.2017, the petitioner discussed about the merits of the matter and placed certain facts, which, according to him, would establish a prima facie case and stated that the assessment being a high pitched

assessment, he is entitled for grant of stay and that he is facing severe financial constraints, as his bank accounts have already been attached. Therefore, it may not be right to observe that no additional grounds have been filed. The stay petitions undoubtedly contain submissions made by the petitioner on merits as well as on the legal issues.

13. Hence, this Court is of the considered view that the first respondent should take a decision on merits on the petitions filed by the petitioner dated 03.8.2017. It is made clear that this Court has not accepted the submissions of the petitioner that the first respondent abdicated his powers or outrightly stated that he does not have a power to grant stay.

14. The learned Senior Standing Counsel for the Revenue was fully justified in his submission that the petitioner's conduct virtually amounts to forum shopping. It is true because the petitioner has been moving various authorities, who have considered the petitioner's requests, afforded him an opportunity of personal hearing and passed speaking orders. However, the petitioner did not comply with any of those directions, but once again approached the first respondent. This will clearly shows the conduct of the petitioner. But, this cannot be a ground for refusing to consider the stay petitions by the Appellate Authority, before whom, the appeals are pending.

15. As held in the case of Paulsons Litho Works, the first respondent has sufficient jurisdiction to deal with stay petitions on merits and in accordance with law. In the light of the above, the impugned order requires to be interfered with and the matter to be remitted back to the first respondent for a decision on merits.

16. Thus, for all the above reasons in the preceding paragraphs and on the grounds pointed out earlier, the writ petition is partly allowed, the impugned order dated 12.10.2017 passed by the first respondent is set aside and the matter is remitted back to the first respondent to be considered on merits and in accordance with law after affording an opportunity of personal hearing. No costs. Consequently, the connected WMPs are closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

To

1.The Commissioner of Income Tax (Appeals)-19, Aayakar Bhavan, M.G.Road, Nungambakkam, Chennai-34.
2.The Principal Commissioner of Income Tax, Central-1, Chennai, M.G.Road, Nungambakkam, Chennai-34.
3.The Assistant Commissioner of Income Tax, Central Circle 3 (2), Chennai, M.G.Road, Nungambakkam, Chennai-34.
4.The Tax Recovery Officer, Central-1, No.46, Nungambakkam High Road, Chennai-34.

+ 1 cc to Mr. R. Srivaraman, Advocate SWr.81418
+ 1 cc to Mr.A.P. Srinivas, Advocate SR.81443
+ 1 cc to Mr. Karthikaa Ashok, Advocate Sr.81269

WP.No.29350 of 2017 &
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NMI(CO)
EU(11/12/2017)