In the High Court of Judicature at Madras

Dated : 17.11.2017

Coram :

The Honourable Mr.Justice T.S.SIVAGNANAM

Writ Petition No.29383 of 2017 & WMP.Nos.31655 to 31657 of 2017

M/s.Sarvalakshmi Chit Funds India
Private Llimited, rep.by its Director
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.214 to 218/17-18/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 2011-12 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-1/31 to 35/16-17 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, which is a private limited company, is engaged in the business of chit funds and has filed this writ petition challenging the order passed by the second respondent dated 30.6.2017 on the petitions filed by the petitioner praying for stay of recovery of tax, pending appeals, for the assessment years 2011-12 to 2015-16 and the order passed by the first respondent dated 12.10.2017 on the petitions seeking to keep the demand of tax in abeyance.

3. The director of the petitioner company by name Mr.J.Srinivasan filed a writ petition in W.P.No.29350 of 2017, in his individual capacity, challenging identical orders. The said writ petition was disposed of by this Court on 16.11.2017. The learned counsel on either side submit that the impugned orders in this writ petition are identical to that of the earlier writ petition and that this writ petition may be disposed of on similar lines. At this stage, it would be useful to refer to the relevant portions of the order dated 16.11.2017 made in W.P.No.29350 of 2017, which read as follows :

> "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.
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> 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."

4. Accordingly, in the light of the order dated 16.11.2017 made in W.P. No.29350 of 2017, this 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.

s/d-
Assistant Registrar(CS-V)

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.A.P. Srinivas, advocate sr 81882.
+1 CC to Ms.R. Sivakumar, advocate sr 81827.

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SP(08/12/2017)