IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.11.2017

CORAM :

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

WRIT PETITION NO.29424 OF 2017 & WMP.NO.31692 OF 2017

World Vision India, rep.by its Director, Finance & Corporate Service Mrs.Lisha John ...Petitioner

Vs

1.The Commissioner of Income Tax (Exemptions), Aayakar Bhawan, Annexe III Floor, No.121, M.G.Road, Chennai-34.

2.The Deputy Commissioner of Income Tax (Exemptions), Chennai Circle, Room No.303, 3rd Annexe Building, No.121, Mahatma Gandhi Road, Chennai-34.

3.The Assistant Commissioner of Income Tax (Hq.), O/o CIT (Exemptions), Aayakar Bhawan, Annexe III Floor, No.121, M.G.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 connected with the impugned order passed by the Respondent No.1 as conveyed in the letter of the Respondent NO.3 bearing C.No.CIT(E)/ AAAAW0007G/stay/2017-18 dated 31.10.2017, quash the same and consequently direct the respondents not to take any steps against the petitioner for deposit of the tax demanded from the petitioner for the assessment year 2014-15 till disposal of the petitioners appeal dated 24.8.2017 pending on the file of the Respondent No.1.

For Petitioner : Mr.Ravikumar Paul, SC for M/s.Paul & Paul

For Respondents : Mrs.Hema Muralikrishnan, SSC

ORDER

Mrs.Hema Muralikrishnan, 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 an order passed by the first respondent, which was communicated to the petitioner through the third respondent, rejecting the petitioner's request for stay of the demand pursuant to the order of assessment dated 31.7.2017 for the year 2014-15.

3. The petitioner has questioned the impugned order firstly on the ground that the Authority, before whom, they moved stay petition, has not passed the order and it appears that the text of the order alone was communicated through the third respondent, which is in violation of the principles of natural justice. It is further submitted that none of the grounds raised by the petitioner in the appeal as well as in the stay petition was considered and that the impugned order is devoid of reasons.

4. The learned Senior Standing Counsel appearing for the respondents submits that the petitioner should have pursued the stay petition, which they had moved before the Assessing Officer on 28.8.2017. On the other hand, they should have moved the Appellate Authority. Instead, they moved a petition before the first respondent seeking stay of the demand. In any event, the Appropriate Authority namely the first respondent passed an order rejecting the petitioner's stay petition and therefore, the petitioner should pay the demand raised in the assessment order. In fact, the first respondent observed that if the assessee wants to avail any facility of instalments, they can apply for the same.

5. After hearing the learned counsel for the parties and perusing the materials on record, this Court does not approve the manner, in which, the stay petition made by the petitioner has been dealt with and also take strong reservation as to the manner, in which, the order has been communicated to the petitioner through the third respondent. The Original Authority or the Appellate Authority, before whom, the petition for stay is moved, is discharging a quasi judicial function. Therefore, it is mandatory on the part of the concerned Authority to pass an order and communicate the same to the assessee. It is only then the assessee would be in a position to challenge such

order, if aggrieved.

6. In the instant case, the petitioner has impugned the proceedings of the third respondent dated 31.10.2017, which has communicated the text of the remarks offered by the first respondent. The petitioner's entitlement to file a petition for stay is a statutory right and hence, the concerned Authority should deal with the petition and pass a speaking order. However, the petitioner also has to be partially blamed, as the stay petition filed by them dated 04.9.2017 before the Principal Commissioner of Income Tax is bereft of particulars.

7. Though the petitioner placed reliance on the decision of the Karnataka High Court in the case of Flipcart India Private Limited Vs. ACIT [W.P.Nos.1339-1342/2017 (T-IT) dated 23.2.2017] stating that while considering the stay of demand, mechanically the instructions given by the Central Board of Direct Taxes should not be applied, it is a cardinal principle of law that the when a petition for stay of demand is sought for, the assessee should establish the prima facie case and should be able to show the balance of convenience in his favour and also should establish that if stay is not granted in his favour, he would be put to irreparable hardship. This legal principle has to be borne in mind by the Statutory Authority, who deals with the petition for stay.

8. In the light of the above, this Court is of the view that the petitioner should be granted liberty to file an appropriate petition for stay clearly setting out as to how they have a prima facie case for grant of interim order and as to what prejudice would be caused to them, if an interim order is not granted. As and when the petitioner for stay is filed, the Appellate Authority should consider the same after affording an opportunity of personal hearing to the assessee and pass a speaking order on merits and in accordance with law.

9. For all the above reasons, the writ petition is allowed, the impugned communication dated 31.10.2017 is set aside and the petitioner is directed to file a petition for stay of the demand before the Commissioner of Income Tax (Appeals)-17, Room No.20, Aayakkar Bhawan, II Floor, No.121, M.G.Road, Chennai-34, within a period of two weeks from the date of receipt of a copy of this order. On such petition is being received by the Appellate Authority, an opportunity of personal hearing shall be afforded to the petitioner and the Appellate Authority shall pass a speaking order on merits and in accordance with law. Till the stay petition is heard and disposed of, no precipitative action

shall be initiated against the petitioner pursuant to the assessment order dated 31.7.2017 for the year 2014-15. Since the Appellate Authority is not a party to this writ petition, Registry is directed to mark a copy of this order to the Commissioner of Income Tax (Appeals)-17, Room No.20, Aayakkar Bhawan, II Floor, No.121, M.G.Road, Chennai-34. No costs. Consequently, the connected WMP is closed.

-s/d-
Assistant Registrar(CS-II)

True Copy

Sub-Assistant Registrar

RS

To
1.The Commissioner of Income Tax (Exemptions), Aayakar Bhawan,
Annexe III Floor, No.121, M.G.Road, Chennai-34.

2.The Deputy Commissioner of Income Tax (Exemptions), Chennai
Circle, Room No.303, 3rd Annexe Building, No.121, Mahatma Gandhi
Road, Chennai-34.

3.The Assistant Commissioner of Income Tax (Hq.), O/o CIT (Exemptions),
Aayakar Bhawan, Annexe III Floor, No.121, M.G.Road,
Chennai-34.

4.The Commissioner of Income Tax (Appeals)-17, Room No.20, Aayakkar
Bhawan, II Floor, No.121, M.G.Road, Chennai-34

+1 CC to Mr. Paul and Paul Advocate sr 81831.
+1 CC to Ms. Hema Muralikrishnan, Advocate sr 82119.

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WMP.No.31692 of 2017

SP(05/12/2017)