IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.09.2018

CORAM

THE HON'BLE MR. JUSTICE K.RAVICHANDRABAABU

W.P.Nos.4121 to 4123 of 2018
and
W.M.P.Nos.5052 to 5054 of 2018

M/s. International Institute of Bio Technology
and Toxicology,
Rep by its Deputy Director,
Dr.Pravat Kumar Sarangi,
S/o Sankhali Sarangi,
BDO Office Road, Padappai - 601 301
Kancheepuram (Dist.,)
Tamil Nadu. ..Petitioner in all the W.Ps.

vs.

1. The Assistant Commissioner of
   Income Tax (Exemptions)
   Chennai Circle,
   Room No.303, 3rd Floor, Annex Building,
   121 Mahatma Gandhi,
   Chennai - 600 034.

2. The Commissioner of Income - Tax (Appeals),
   121 Mahatma Gandhi Road,
   Chennai - 600 034. ..Respondents in all the W.Ps.

Writ Petitions filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records in PAN:AAATF0061E/ 2010-11, PAN:AAATF0061E/ 2011-12 & PAN:AAATF0061E/2015-16 respectively dated 20.02.2018 relating to Assessment Year 2010-11, 2011-12 & 2015-16 respectively on the file of the 1st respondent and quash the same and further forbearing the 1st respondent from initiating or continuing with any proceedings for recovery of the disputed demand pursuant to the order of assessment in PAN No.AAATF0061E dated 18.12.2017 relating to Assessment year 2010-11, 2011-12 & 2015-16 respectively passed by the 1st respondent.

For Petitioner : Ms.S.Sree Lakshmi valli For Mr.G.Baskar

For Respondents : Mr.J.Naveen Durai babu, Standing Counsel for Income Tax

COMMON ORDER

These three writ petitions are filed challenging the order dated 20.02.2018 passed by the first respondent/ Assessing Officer in granting conditional stay of recovery till the disposal of the First Appeal before the Appellate Authority.

2. The short facts which had driven the petitioner to approach this Court and file these writ petitions are as follows:

The petitioner is an assessee before the first respondent. The subject matter of assessment years are 2010-2011, 2011-2012 and 2015-2016. The petitioner filed their return, admitting Nil income in respect of those assessment years. The case was reopened under Section 147 in respect of assessment years 2010-2011 and 2011-2012 to examine the claim of the assessee for exemption under Section 10(21) of the Income Tax Act. In respect of assessment year 2015-16, the assessment order was passed under Section 143. Thus, the Assessing Officer passed orders of assessment in respect of each assessment year raising demand of tax thereby, rejecting the exemption claimed by the assessee under Section 10(21) of the Income Tax Act. Challenging those assessment orders, the petitioner filed appeal before Commissioner of Income Tax (Appeals). Pending appeal, the petitioner filed a petition for stay of recovery before the Assessing Officer by raising a contention that the assessee's appeal in respect of assessment years 2012-2013 to 2014-2015 were allowed by the Commissioner of Income Tax (Appeals) on 11.09.2017 arising out of the same issue. However, the first respondent/ Assessing Officer granted stay subject to a condition that the petitioner pays 20% of the disputed demand.

Hence, these writ petitions are filed challenging the order of the first respondent, only insofar as the condition imposed to pay 20% of the disputed demand alone is concerned, while granting the stay. In other words, the grievance of the petitioner before this Court is that the first respondent ought to have granted unconditional stay pending disposal of the appeal before the first appellate authority, taking note of the fact that the appeal filed in respect of other three assessment years arising out of the same issue were allowed by the Commissioner of Income Tax (Appeals) on 11.09.2017.

3. A counter affidavit is filed by the first respondent wherein, it is stated that the impugned order was passed by

granting opportunity of hearing to the petitioner and therefore, the petitioner cannot find fault with the first respondent in imposing condition while granting the interim stay.

4. The learned counsel for the petitioner submitted that when similar orders were passed by the Assessing Officer in respect of the assessment years 2012-2013 and 2013-2014, the same were to be put to challenge before this Court in W.P. No.17949 of 2015 and W.P. No.18336 of 2016 and this Court disposed of both the above writ petitions by staying the recovery proceedings till the disposal of the appeals before the first appellate authority in respect of those assessment years. Therefore, she contended that the petitioner is entitled to get similar relief in respect of the subject matter assessment years as well.

5. The learned counsel for the respondents, on the other hand, submitted that even though, this Court in the above writ petitions have granted stay of recovery of the proceedings, pending disposal of appeal by relying upon the order passed by the Tribunal in respect of assessment years 1997-1998, 1998-1999 and 2000-2001, the Revenue is in the process of filing tax case appeal as against the said order of the Tribunal before this Court and therefore, the order passed by the first respondent, granting conditional stay need not be interfered with.

6. Heard both sides.

7. The subject matter assessment years are 2010-2011, 2011-2012 and 2015-2016. The issue involved in respect of all these assessment years is as to whether the petitioner is entitled for exemption under Section 10(21) of the Income Tax Act and consequently, whether the Nil income return filed by them is to be accepted or not. Admittedly, the said return filed by the petitioner was not accepted and consequently, the Assessing Officer passed orders of assessment and that those assessment orders are put to challenge before the Commissioner of Income Tax (Appeals). It is not in dispute that those appeals are still pending. Pending disposal of the appeal, the petitioner sought for stay of recovery of the tax imposed in the assessment orders. While disposing such application for stay, the first respondent/ Assessing Officer has directed the petitioner to pay 20% of the disputed demand.

8. In my considered view, the above order passed by the first respondent directing the petitioner to pay 20% disputed demand, as a condition to grant the stay, cannot be sustained, in view of the fact that on the very same issue namely, entitlement of the petitioner for exemption under Section 10(21) of the Income Tax Act, already a decision of the Income Tax

Appellate Tribunal had come in favour of the petitioner on 26.05.2006 in respect of assessment year 1997-1998 etc. It is seen that the Tribunal has found that the petitioner is entitled for exemption under Section 10(21) of the Income Tax Act. Even though, the learned counsel for the respondents contended that the said order of the Tribunal is sought to be challenged by way of appeal before this Court, the fact remains that till this date, the said order is in force and has not been stayed so far.

9. Further, it is seen that in respect of the other two assessment years, viz., 2012-2013 and 2013-2014, similar order passed by the Assessing Officer were interfered with in W.P. No.17949 of 2015 and W.P.No.18336 of 2016 dated 14.6.2016 and 01.07.2016, respectively, by relying upon the above order of the Tribunal dated 26.05.2006. Perusal of the said order made in those writ petitions would show that this Court has stayed the recovery proceedings till the disposal of the appeals filed before the appellate authority in respect of those assessment years. Therefore, I find every justification on the part of the petitioner in seeking the very same relief in respect of the subject matter assessment years as well, pending disposal of the appeal, since the issue is one and the same in both cases.

10. Therefore, this Writ Petition is allowed in part and the impugned orders of the first respondent is modified to the effect that there will be an order of stay of recovery proceedings, pending disposal of the appeal filed by the petitioner before the Commissioner of Income Tax (Appeals) in respect of the assessment years 2010-2011, 2011-2012 and 2015-2016. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CO)

// True Copy//

Sub Assistant Registrar

vsi

To

1. The Assistant Commissioner of
Income Tax (Exemptions)
Chennai Circle,
Room No.303, 3rd Floor, Annex Building,
121 Mahatma Gandhi,
Chennai - 600 034.

2. The Commissioner of Income - Tax (Appeals),
121 Mahatma Gandhi Road,
Chennai - 600 034.

+1cc to Mrs.Hemamuralikrishnan, Advocate SR.No.61857
+2ccs to Mr.G.Baskar, Advocate SR.No.61595

W.P.Nos.4121 to 4123 of 2018

PA(CO)
RMP(26/09/2018)