IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 19.07.2018

CORAM:

The Honourable Mr.Justice M.M.SUNDRESH
and
The Honourable Mr.Justice N.ANAND VENKATESH

Writ Appeal Nos.1198 to 1203 and 1551 to 1556 of 2018
and
C.M.P.Nos.9688 to 9699 of 2018
and
MP.Nos.12316 to 12320 and 12454 to 12458

M/s.Vasan Health Care Pvt.Ltd.,
Rep. by its Managing Director Dr.A.M.Arun
S/o.Thiru A.R.Murgaiah,
No.70, Lancor West Minister,
4th Floor, Dr.Radhakrishnan Salai,Mylapore
Chennai - 600 004. ... Appellant
in W.A.Nos.1198 to 1203/2018

Assistant Commissioner of Income Tax,
Central Circle-2(1),
Investigation Wing, Room.No.122,
1st Floor, New No.46, M.G.Road,
Chennai - 600 034. ... 1st Appellant
in W.A.Nos.1551 to 1556/2018

..Vs..

1.Assistant Commissioner of Income Tax,
Central Circle-2(1),
Investigation Wing, Room.No.122,
1st Floor, New No.46, M.G.Road,
Chennai - 600 034.

2.Principal Commissioner of Income Tax
Central Range - 2,
III Floor, No.46, (Old No.108),
Mahatma Gandhi Road, Chennai - 600 034.
..2nd Appellant in W.A. 1551 to 1556/2018.

3.Commissioner of Income Tax (Appeals) - 18
Aayakar Bhavan
No.46, Mahatma Gandhi Road,
Chennai - 600 034. ..3rd appellants in W.A.Nos.1551 to 1556/2018.

4.The Manager,
Axis Bank,
No.82, Dr.Radhakrishnan Salai,
Chennai - 600 018. ... Respondents 1 to 4
in W.A.Nos.1198 to 1203/2018

1. M/s.Vasan Health Care Pvt.Ltd.,
Rep. by its Managing Director Dr.A.M.Arun
S/o.Thiru A.R.Murgaiah,
No.70, Lancor West Minister,
4th Floor, Dr.Radhakrishnan Salai,Mylapore
Chennai - 600 004.

2.The Manager,
Axis Bank,
No.82, Dr.Radhakrishnan Salai,
Chennai - 600 018. ... Respondents

in W.A.Nos.1551 to 1556/2018

PRAYER: Writ Appeals filed under Clause 15 of the Letters Patent Appeal to set aside the common order dated 28.04.2018 passed in W.P.Nos.6040 to 6045 of 2018 respectively.

W.P.Nos.6040 to 6045/2018:
Writ Petitions filed under Article 226 of the constitution of India praying for issuance of a Writ of Certiorarified Mandamus calling for the records in C.No. 2802/C-2/2017-18 dated 06.03.2018 for Assessment Year 2010-11, 2011-2012, 2013-2014, 2014-2015, 2015-2016 & 2016-2017 on the file of the 2nd respondent and quash the same and direct the 2nd respondent to grant stay of collection of outstanding tax demand pending disposal of the appeal before the 3rd respondent.

For Appellant : Mr.P.S.Raman, Senior Counsel
for Mr.M.P.Senthil Kumar
(in W.A.Nos.1198 to 1203/2018 & 1st Respondent in W.A.Nos.1551 to 1556/2018)

For Respondents : Mr.A.P.Srinivas, SC, and
Mr.Jayapratap
for RR1 to RR3.
(in W.A.Nos.1198 to 1203/2018)

For R4 : No Appearance
(in W.A.Nos.1198 to 1203/2018 and 2nd Respondent in W.A.Nos.1551 to 1556/18)

COMMON JUDGMENT

(Judgment of the Court was delivered by M.M.SUNDRESH.,J. and N.ANAND VENKATESH.,J.)

These writ appeals have been filed against the common order passed in WP.Nos.6040 to 6045 of 2018 dated 28.04.2018. One set of appeals in W.A.Nos.1198 to 1203 of 2018 has been filed by M/s.Vasan Health Care Private Limited and the other set of writ appeals in W.A.Nos.1551 to 1556 of 2018 has been filed by the Assistant Commissioner of Income Tax and another.

2. For the sake of convenience, the parties will be referred as petitioner and respondents as arrayed in the writ petitions.

3. Brief facts that are necessary for the purpose of disposing these appeals.

3.1. The petitioner filed its return for assessment years 2011-2012 to 2016-17 and the same was processed under section 143(1) of the Income Tax Act, 1961 (hereinafter referred as the "Act"). The return of the Income Tax was scrutinized through CASS and assessments under section 143(3) of the Act was completed. A search was conducted on 01.12.2015 in the premises of the petitioner and also its offices and a search was conducted under section 133 (A) of the Act in the group concerns by the department. Notices were issued under section 153(C) of the Act on 28.02.2017 and the petitioner responded for the same on 28.02.2017. Assessments were completed under section 143(3) read with 153(C) read with 153(A) of the Act on 29.12.2017.

3.2. The petitioner filed the stay petition before the assessing officer not to collect the tax, since they were in the process of filing the appeal against the assessment orders. The assessing officer by an order dated 30.01.2018, after referring to the revised instructions of CBDT in number 1914, directed the petitioner to pay 20% of the disputed amount, within 3 days failing which the stay petition will be treated to be rejected.

3.3. The petitioner also filed the stay petition before the Principal Commissioner of Income Tax, praying for stay of collection of the taxes. While doing so, the tax recovery officer issued prohibitory orders against the Directors of the petitioner's company. The petitioner approached this Court and filed WP.Nos.4778 to 4783 and 4784 to 4790 of 2018, challenging the orders passed by the assessing officer in the stay petition. The writ petitions were disposed of by a common order dated 05.03.2018, directing the Principal Commissioner of Income Tax to consider afresh stay applications filed by the petitioner.

3.4. The Principal Commissioner of Income Tax passed an order dated 06.03.2018, directing the petitioner to pay 30% of the disputed demand and on such payment, the balance tax payable was stayed till the disposal of the appeal. This order came to be challenged in two sets of writ petitions, one filed by the appellant company herein and the other filed by the Directors.

3.5. Before filing the writ petitions, the petitioner filed a stay petition on 13.03.2018 before the Commissioner of Income Tax (Appeals) (herein after referred as "CITA") requesting for stay of the entire disputed amount for each of the assessment years. While those petitions were pending, the writ petitions which are the subject matter of these appeals, were moved before this Court by the petitioner.

3.6. On 16.03.2018, the CITA disposed of the stay petitions by directing the petitioner to pay 20% of the total demand. This order was not challenged by way of filing an independent writ petition. In the meantime, the petition filed for rectification under section 154 of the Act which came to be rejected by the assessing officer by an order dated 13.04.2018.

3.7. All the above said subsequent events were also brought to the notice of the learned Single Judge at the time of hearing of the appeals. The learned Single Judge on consideration of the materials on record and on consideration of the arguments putforth on either side, disposed of the writ petition by directing the petitioner to pay 5% of the tax demanded for each of the assessment years within a period of 3 weeks from the date of receipt of copy of the order and on complying with such condition, the petitioner company was also granted leave to file a fresh stay petition before the CITA and the CITA was directed to dispose all the stay petitions on merits and in accordance with law.

3.8. The common order that was passed in the writ petitions filed by the petitioner company, is now the subject matter of challenge by both the petitioner company as well as the department.

4. Submissions made by Mr.P.S.Raman, learned Senior Counsel for the Appellant in W.A.Nos.1198 to 1203 of 2018 and 1st Respondent in W.A.Nos.1551 to 1556 of 2018

(i) The learned Senior Counsel submitted that the assessments are extremely high pitched assessments and the tabular column that has been prepared for the purpose would go on to show that for certain assessment years., it has touched 548 times, 444 times 79 times and 74 times more than the total income assessed.

(ii) The respondents failed to appreciate Instruction Number 96, dated 21.08.1969 read with sub clause 2(B)(III) of the Instruction Number 1914, dated 2.12.1993 issued by the CBDT, which specifically provided that where the assessment order is unreasonably high pitched, the collection of the tax in dispute should be kept in abeyance till a decision is reached in the appeal filed by the assessee. In order to substantiate this argument, the learned Senior Counsel brought to the notice of the Court, the judgment of the Delhi High Court in , "(2008) 173 TAXMAN 0468" (SOUL Vs. DEPUTY COMMISSIONER OF INCOME TAX) wherein, the Delhi High Court has held that where the assessment order appears to be unreasonably high pitched, the recovery of tax should be kept in abeyance till the disposal of the appeal.

(iii) The learned Senior Counsel further contended that on the one hand all the bank accounts have been freezed by the department and on the other hand a huge amount is demanded to be paid and the petitioner has got 120 branches all over India and 5000 employees including Doctors and support staff for whom the salary has to be paid and the rent will have to be paid in various locations where the hospitals are run and the petitioner has been financially crippled. This will directly impact the public interest since the health care of the general public is directly involved in the business of the petitioner company.

(iv) The learned Senior Counsel further contended that the petitioner was incurring losses and has suffered tremendous downfall in revenue and it does not have the means to pay 5% of the demand as fixed by the learned Single Judge. The learned Senior Counsel also submitted that a huge amount to be refunded to the petitioner company remains with the department.

4.1. Submissions made by Mr.,A.P.Srinivas, learned Standing Counsel for the Respondents 1 to 3 in W.A.Nos.1198 to 1203 of 2018

(i) Per contra, the learned Standing Counsel for the Department contended that the petitioner has not shown their bonafide by making any payment towards the tax dues and it is adopting dilatory tactics by filing one stay petition after another before various authorities.

(ii) It was further submitted that the writ petitions were filed against the orders passed by the Principal Commissioner of Income tax and by the time the writ petitions were heard, the CITA disposed of the stay petition filed by the petitioner directing the petitioner to pay 20% of the total demand and therefore the writ petitions themselves had became infructuous since the order passed by the CITA in the stay petition was not challenged by the petitioner. However, the learned Single Judge by passing final orders in the writ petition, had taken into consideration the orders passed by the CITA in the stay petitions and only thereafter the petitioner was directed to pay 5% of the tax demanded for each of the assessment years. This itself according to the learned standing counsel was a concession which the learned Single Judge ought not to have given to the petitioner. The learned Standing Counsel further contended that at this stage, the court cannot go into the merits of the case or appreciate whether the assessments are high pitched. If the petitioner company wants the benefit of the order of stay, it is duty bound to deposit the percentage of tax demand fixed by the authorities and there can never be a blanket stay granted in a case of these nature.

(iii) The learned Standing Counsel relied upon the judgment in "2016 (332) E.L.T. 256 (Mad.), (Prachi Silks Vs. Commissioner of Customs, Chennai - 1)" in order to substantiate his contention that without the petitioner pleading undue hardship by providing relevant facts and materials it cannot expect the authorities to grant a blanket stay on the payment of tax due from the petitioner.

(iv) The learned Standing Counsel further contended that the learned Single Judge ought not to have exercised the discretion in favour of the petitioner by directing it to deposit 5% of the tax demanded since there were no bonafides on the part of the petitioner and the petitioner is due and payable towards tax a sum of nearly 400 crores to the department.

5. Discussions:

(i) This Court has carefully considered the submissions made on either side and also carefully perused the materials on record.

(ii) The petitioner has been filing one stay petition after another before the authorities and was not complying with the conditional orders passed by the authorities. The stay petitions filed by the petitioner before the authorities does not contain averments pleading undue hardship by providing the relevant facts and materials and all petitions have been filed in a casual manner. The learned Single Judge has taken note of these facts and has held that vague averments have been set out in the applications without the support of any materials and it has given an impression in the mind of the authorities that the stay petitions are not pursued seriously. Therefore the authorities cannot be blamed for the condition imposed by them in the order, while disposing of the stay application.

(iii) With regard to the arguments of high pitched assessments, the appeal has already been pending before the CITA and therefore this court does not want to go into that issue, since any observation made will have serious impact for both sides in the pending appeal.

(iv) The learned Single Judge had dealt with the scope of the circular and has given finding that the petitioner has not made out any case before the authorities by providing sufficient materials and by making necessary averments. The learned Single Judge has also taken note of the fact that the intention of the petitioner is to drag on the matter and not to comply with the order passed by the authorities and for the first time in the writ petition, the petitioner was attempting to canvass the issue of financial constraints.

(v) The learned Single Judge has dealt with in detail the contentions putforth by the petitioner and the department, and has exercised the discretion with sound reasons. The learned Single Judge took note of the fact that the petitioner company has established eye hospitals in various parts of the State and elsewhere in the country and has employed several persons and Doctors and several citizens require the care and attention of these hospitals. After taking into consideration all these factors, the learned Single Judge thought it fit to give one last opportunity to the petitioner by directing the petitioner to pay 5% of the tax demanded and thereafter to move a fresh stay petition before the CITA. This Court does not find any ground to interfere with the discretion exercised by the learned Single Judge.

6. Conclusion:

(i) This Court taking into consideration the facts and circumstances of the case and also the order passed by the learned Single Judge, consider it necessary to fix a lumpsum amount to be paid by the petitioner in installments and thereafter permit the petitioner to prosecute the appeal pending before the CITA. This court is of the view that if the petitioner is permitted to file another fresh stay application before the CITA, it will unnecessarily result in another round of litigation, which will have impact in disposal of the appeal. Therefore this court deems it fit to fix an amount of Rs.35,00,00,000/- (Rupees Thirty Five Crores only) to be paid by the petitioner company in 12 equal monthly installments as a condition to stay the recovery proceedings and keep it in abeyance till the disposal of the appeal pending before the CITA.

(ii) The writ appeals are disposed of modifying the order passed by the learned Single Judge in the writ petitions with the following directions:

(a) The petitioner company is directed to pay a sum of Rs.35,00,00,000/- (Rupees Thirty Five Crores only) in 12 equal monthly installments starting from July 2018.

(b) It is brought to the notice of the Court that the department has withdrawn a sum of Rs.2,49,23,951/- by way of bank attachment this month. Therefore the petitioner is directed to pay the balance amount after giving credit to the amount already withdrawn by the department towards installment for the month of July 2018, on or before 31.07.2018.

(c) The petitioner is directed to pay the equal monthly installments from August 2018 on or before the 5th of every month.

(d) On the completion of the payment of the entire 12 installments by the petitioner company, the CITA is directed to take the appeals for hearing and dispose it of within a period of 6 months thereafter.

(e) There shall be a stay of the recovery proceedings till the disposal of the appeal before the CITA on the conditions mentioned in clause (a to d).

(f) In case of any default on the part of the petitioner company to comply with any of the conditions imposed by this Court, the stay shall stand automatically vacated and the department will be at liberty to proceed further to recover the tax amounts due from the petitioner company, without any reference to this Court.

In the facts and circumstances of the case there shall be no order as to costs and the connected Miscellaneous Petitions are closed.

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

True Copy

Sub-Assistant Registrar

drl

To

1.Assistant Commissioner of Income Tax,
Central Circle-2(1),
Investigation Wing, Room.No.122,
1st Floor, New No.46, M.G.Road,
Chennai - 600 034.

2.Principal Commissioner of Income Tax
Central Range - 2,
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No.46, Mahatma Gandhi Road,
Chennai - 600 034.

4.The Manager,
Axis Bank,
No.82, Dr.Radhakrishnan Salai,
Chennai - 600 018.

+1 CC to Mr.A.P. Srinivas, Advocate sr 48450.
+3 Ccs to Mr.G. Baskar, Advocate sr 47868.

W.A.Nos.1198 to 1203 of 2018
W.A.Nos.1551 to 1556/2018 and
CMP.Nos.9688 to 9699 of 2018

SP(23/07/2018)