IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.03.2018

CORAM

THE HONOURABLE MR.JUSTICE K.RAVICHANDRABAABU

Writ Petition Nos.4778 to 4783 & 4784 to 4790 of 2018
and
W.M.P.Nos.5921 to 5926 & 5927 to 5933 of 2018

W.P.No.4778 of 2018

1. M/s. Vasan Helth Care Pvt.Ltd.,
rep. By its Managing Director,
Dr.A.M.Arun, S/o A.R.Murugaiah
No.70, Lancor West Minister,
4th Floor,Dr.Radakrishnan Salai,
Mylapore,Chennai - 600 004. .. Petitioner
(in Wps.4778 to 4783 of 2018)

2. Dr.A.M.Arun, S/o.A.R.Murugaiah,
199, St.Mary's Road, Alwarpet,
Chennai .. Pertitioner
(in Wps.4784 to 4790 of 2018)

Vs.

1. The 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,
46, Mahatma Gandhi Road,
Chennai - 600 034.

3. Commissioner of Income Tax (Appeals)-18,
Aayakar Bavan,
46, Mahatma Gandhi Road,
Chennai - 600 034.

4. The Tax Recovery Officer,
Central -2,
Room No.322, III Floor,
No.46, Nungambakkam High Road,
Chennai - 600 034. .. (RR1 to 4 in all Wps)

Writ Petition filed under Article 226 of the constitution of India to issue a Writ of Certiorarified Mandamus to call for the records in DCIT/Cent.Cir.2(1)/AACCV7028E/2017-18 dated 30.01.2018 for the assessment Year 2010-11, 2011-12, 2013-14, 2014-15, 2015-16, 2016-17 respectively on the file of the 1st respondent and quash the same and direct the 1st respondent to grant stay of collection of outstanding tax demand pending disposal of the appeal before the third respondent.(in Wps.4778 to 4783 of 2018)

For Petitioners : Mr.G.Baskar

For Respondents : Mr.A.P.Srinivas
Senior Standing Counsel

COMMON ORDER

All these writ petitions are filed challenging the proceedings of the first respondent dated 30.01.2018 calling upon the petitioners to pay 20% of the disputed demand within three days so that recovery of balance demand can be stayed. The impugned communication thus indicated further that failure to make such payment would result in treating the stay petition as rejected and for proceeding to recover the demand as arrived in the order of assessment.

2. W.P.Nos.4778 to 4783 of 2018 are filed by the Company, whereas W.P.Nos.4784 to 4790 of 2018 are filed by one of its Directors. The impugned order in each writ petition was passed by the first respondent in respect of assessment years 2010-2011 to 2016-2017 except 2012-2013.

3. Mr.A.P.Srinivas, learned Senior Standing Counsel takes notice for the respondents. By consent of the parties, the main writ petitions are taken up for final disposal.

4. There is no dispute to the fact that the Assessing Authority has passed an order of assessment in respect of each assessment year. It is also not in dispute that those assessment

orders are put to challenge before the Appellate Authority, namely, Commissioner of Income Tax (Appeals) and all those appeals are pending. However, during the pendency of the appeals, the petitioners approached the Assessing Authority and sought for interim stay of the demand, pending disposal of the appeal before the Appellate Authority. The Assessing Authority, while considering the Stay Petition called upon the petitioners to pay 20% of the disputed demand as a condition precedent for staying the demand. Now, the said order of the Assessing Authority is challenged before this Court.

5. Learned counsel for the petitioners, though sought to raise very many grounds on merits of the demand, this Court is not inclined to go into the same for the simple reason that it is for the First Appellate Authority, namely, Commissioner of Income Tax (Appeals) to consider and decide such contentions, since the First Appellate Authority is also a fact finding authority. Learned counsel for the petitioners further submitted that as per the Circular issued by the Central Board of Direct Taxes dated 29.02.2016, the petitioners are entitled to go before the Principal Commissioner of Income Tax, namely, the 2nd respondent herein questioning the correctness or otherwise of the order passed by the Assessing Officer which is impugned in these writ petitions and thus, the petitioners have also filed applications before the 2nd respondent on 02.02.2018. Therefore, he submitted that in the mean time, the authorities should not resort to the recovery proceedings.

6. Learned senior standing counsel appearing for the respondents submitted that the applications filed before the 2nd respondent will be considered and orders will be passed on merits and in accordance with law within a short time.

7. Considering the above stated facts and circumstances, more particularly, the fact that the petitioners have already approached the 2nd respondent by way of their applications dated 02.02.2018 questioning the very order passed by the first respondent, which is impugned herein, this Court is of the view that it is for the 2nd respondent to consider those applications and pass orders on merits and in accordance with law, as this Court, at this stage, is not inclined to express any view on the merits of the claim made by the petitioners. Accordingly, all these writ petitions are disposed of only with a direction to the 2nd respondent to consider those applications filed by the petitioners on 02.02.2018 and pass orders on the same on merits and in accordance with law within a period of two weeks from the date of receipt of a copy of this order. It is made clear that

this Court is not expressing any view on the merits of the claim made by the petitioner as this Court has not gone into any of the contentions raised in these writ petitions. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

vsi
To

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+2ccs to Mr.G.Baskar, Advocate, S.R.No.16537 & 16538

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and
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rv(co)
cs/20/03/18