IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATE: 04.04.2018
CORAM
THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
W.P.Nos.7819 and 7820 of 2018
&
W.M.P.Nos.9758 to 9760 of 2018

Kalaignar TV Private Limited
(Represented by its Director
Mr.P.Amirtham)
No.367/369, Anna Salai
Teynampet,
Chennai – 600 018. .. Petitioner in both W.Ps'

Versus

The Assistant Commissioner of Income-tax
Non-Corporate Circle 20(1)
Room No.311, New Block, III Floor,
121, M.G.Road,
Chennai – 600 034. ` .. Respondent in both W.Ps'

Prayer in W.P.No.7819 of 2018: This Writ Petition is filed under Article 226 of the Constitution of India, seeking for a Writ of Certiorari, calling for the records of the respondent in PAN AADCK0898E/ACIT/NCC-20(1)/CHN dated 28.03.2018 issued under Section 226(3) of the Income-tax Act, 1961 and quash the same and pass such further or other orders.

Prayer in W.P.No.7820 of 2018: This Writ Petition is filed under Article 226 of the Constitution of India, seeking for a Writ of Prohibition forbearing the respondent from taking any coercive steps towards recovery of the alleged liability for the Assessment Year 2011-12 pursuant to the order bearing Ref.F.No.AADCK0898E/2011-12/ACIT/NCR-20, Chennai dated 23.03.2018 till the expiry of the period of limitation for filing an appeal against the order dated 15.03.2018 under the provisions of the Income Tax Act, 1961 and pass such further or other orders.

For Petitioner : Mr.P.S.Raman, Senior Counsel
for Mr.Sandeep Bagmar
For Respondent : Mr.J.Narayanaswamy,
(in both W.Ps') Standing Counsel

COMMON ORDER

Heard Mr.P.S.Raman, learned Senior Counsel for Mr.Sandeep Bagmar, learned counsel appearing for the petitioner and Mr.J.Narayanaswamy, learned Standing Counsel for the respondent/revenue. With the consent on either side, the writ petitions are taken up for disposal.

2. The petitioner in both the writ petitions is one and the same and the relief sought for in W.P.No.7819 of 2018 is to quash the notice issued by the respondent under Section 226(3) of the Income-tax Act, 1961. In W.P.No.7820 of 2018, the petitioner seeks for a writ of prohibition to forbear the respondent from taking any coercive steps towards recovery of the alleged liability for the Assessment Year 2011-12, pursuant to the order passed by the respondent dated 23.03.2018 till the expiry of the period of limitation for filing an appeal against the order dated 15.03.2018.

3. The learned Senior Counsel appearing for the petitioner submitted that the order passed by the CIT (A) dated 15.03.2018 was served on the petitioner/assessee on 19.03.2018 and the period of limitation for filing an appeal before the Income tax Appellate Tribunal (IAT) expires only on 18.05.2018 and within the said period, the impugned notice under Section 226(3) of the Income tax Act, 1961 has been issued and the same is wholly without jurisdiction.

4. It is further submitted that the action initiated by the respondent issuing notice under Section 226(3) of the Act is contrary to the judgment of the Hon'ble Supreme Court in the case of Bombay Stock Exchange Vs. V.S.Kandalgaonkar and others [(2015) 2 SCC Page 1] as the debts of the petitioner are secured with the Indian Bank which has offered Open Cash Credit facility with a limit of Rs.85 Crores (at present Rs.75 Crores) and the first charge over all present and future assets including the receivables is with Indian Bank.

5. Pursuant to the impugned notice dated 23.03.2018, it appears that a sum of Rs.40,90,859/- (Rupees forty lakhs ninety thousand eiht hundred and fifty nine) has been collected by issuing a garnishee notice to M/s.Lalitha Jewellery. Learned Senior Counsel appearing for the petitioner fairly submits that whatever has been collected is not been disputed before this Court and what they seek is for protection from further recovery proceedings.

6. Learned Standing Counsel appearing for the revenue submitted that earlier the petitioner had approached this Court and filed two writ petitions in W.P.Nos.27209 & 27210 of 2017 challenging the proceedings of the Principal Commissioner of Income Tax-10, Chennai dated 27.03.2017 and forbearing the authorities not to enforce the arrears of demand against the petitioner pending disposal of the appeals before the CIT (A) and for a direction upon the CIT (A) to dispose of the appeals within a time frame. It is pointed out that this Court, by order dated 26.10.2017, dismissed W.P.27209 of 2019 and disposed of W.P.No.27210 of 2017 by observing that the CIT (A) may expedite the disposal of the appeal. It is pointed out that the appeal filed by the petitioner has been dismissed by the CIT (A) and therefore, the respondent was justified in issuing the impugned notice under Section 226(3) of the Act.

7. Under normal circumstances, this Court would have accepted the submissions of the learned Standing Counsel for the revenue, but for the fact that the appeal time for preferring an appeal against the order passed by the CIT (A) dated 15.03.2018 expires only on 18.05.2018, if in the meantime, the demand is enforced and the tax is recovered then the very purpose of filing an appeal will be negated and such an appeal is liable to become infractuous. Therefore, the Authority ha to necessarily wait till the the expiry of appeal time, which in the instant case stated to be expired on 18.05.2018. Therefore, till then the impugned notice should be kept in abeyance.

8. Thus, for the above reasons, the writ petitions are disposed of by directing the respondent to keep the impugned notice dated 28.03.2018 in abeyance till 25.05.2018. Within such time, it is open to the assessee to approach the ITAT and secure appropriate orders. Upon failure of assessee to obtain any orders either interim or final from the ITAT within 25.05.2018, the respondent is entitled to revive the impugned notice and proceed with the recovery proceedings. It is made clear that this Court has not expressed any opinion on the merits of the matter and it is open to the petitioner to canvass all issues before ITAT. No costs. Consequently, connected miscellaneous petitions shall stand closed.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

vsm

To

The Assistant Commissioner of Income-tax
Non-Corporate Circle 20(1)
Room No.311, New Block, III Floor,
121, M.G.Road,
Chennai - 600 034.

+2 ccs to M/s.Sandeep Bagmar Advocate sr 24884
+1 cc to M/s.J.Narayana Samy Advocate sr 25519

W.P.Nos.7819 and 7820 of 2018

ad(co)
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