IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 29.06.2018
CORAM:
THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
AND
THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

W.P.No.15957 of 2018
and WMP No.18970 of 2018

M/s.Panasonic Corporation,
C/o.Panasonic India Pvt. Ltd.,
6th Floor, SPIC Building, Annexe,
No.88, Mount Road, Guindy,
Chennai 600 032. PAN: AACM7746A
Rep. By its Power of Attorney,
Ms.Ruchika Pasricha ...Petitioner

Vs.

1. The Income Tax Appellate Tribunal,
'D' Bench, Chennai,
(Rep. By its Registrar)
Rajaji Bhavan, Besant Nagar,
Chennai 600 090.

2. The Deputy Commissioner of Income Tax,
International Taxation 2(2)
Chennai 600 006. ...Respondents

Prayer:- Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus, to call for the records of the Respondent No.1 in Stay Petition No.152/CHNY/2018 in ITA No.1483/CHNY/2017 dated 18.05.2018 and quash the same and direct the respondent No.2 to not to recover the outstanding tax demand till the disposal of appeal before the Respondent No.1.

For Petitioner : Mr.Sandeep Bagmar

For Respondents: Mrs.Hema Muralikrishnan

O R D E R

(Judgment of the Court was delivered by R.SUBRAMANIAN, J.)

The petitioner challenges the interim order passed by the Income Tax Appellate Tribunal, 'D' Bench, Chennai.

2. While considering the stay petition filed by the petitioner pending the Appeal in ITA No.1483/CHNY/2017, the Income Tax Appellate Tribunal, 'D' Bench had granted a conditional stay order directing the petitioner to pay the demanded amount in monthly installments of Rs.50,00,000/- each. The main Appeal was posted for hearing on 06.06.2018.

3. The challenge in the Writ Petition is mainly on the ground that the petitioner had paid nearly 77% of the amount demanded under the demand notice which is under challenged before the Income Tax Appellate Tribunal. A calculation is also appended to the affidavit filed in support of the injunction petition in WMP No.18970 of 2018. As per the said calculation, the total demand as per the notice under Section 156 of the Income Tax Act, works out to Rs.4,10,85,311/-. The petitioner claims that they had paid a sum of Rs.1,55,75,422/- out of the amount demanded leaving a balance of Rs.2,55,09,891/-.

4. We have heard Mr.Sandeep Bagmar, learned counsel appearing for the petitioner and Mrs.Hema Murlikrishnan, learned counsel appearing for the respondents.

5. The learned counsel for the petitioner would contend that inasmuch as the petitioner had paid more than half of the amount of Tax demanded, as per the order of the Assessing Officer, the condition imposed by the Tribunal for grant of stay is onerous.

6. Mrs.Hema Muralikrishnan, learned Standing Counsel appearing for the Department would contend that the interim order being a discretionary order cannot be interfered with under Article 226 of the Constitution of India.

7. We have considered the rival submissions. The fact that the petitioner has paid a major portion of the tax demanded, as per the order of the Assessing Officer is not in dispute. Out of the total Tax demanded along with interest under Section 234 (A) and 234 (B), which is to the tune of Rs.11,59,14,846/- as on today the balance payable is only Rs.2,55,09,891/-. Considering the fact that the petitioner has paid nearly 77% of the Tax and interest demanded in the order of the Assessing Officer, we do not think that the ITAT was right in imposing a condition directing the petitioner to pay the tax demanded in installments of Rs.50,00,000/- per month. It is also stated at the bar that the appeal itself is posted for hearing on 12.07.2018. The counsel for the petitioner undertakes to argue the appeal before the Income Tax Appellate Tribunal on 12.07.2018 without seeking further adjournments.

8. We are therefore of the view that interests of justice

would be served by directing the Tribunal to take up the main appeal itself on 12.07.2018 without insisting on payment of Rs.50,00,000/- per month during the interregnum. Hence the Writ Petition is disposed of with the following direction:

> The ITAT is directed to dispose of the Appeal in ITA No.1483/CHNY/2017 on 12.07.2018. The counsel for the petitioner shall cooperate in disposal of the Appeal on 12.07.2018 without seeking an adjournment. The requirement of the interim order of stay granted by the ITAT to pay a sum of Rs.50,00,000/- per month will remain suspended till then.

There will be no order as to costs. Consequently the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//
Sub Assistant Registrar

TO

1. The Registrar
   Income Tax Appellate Tribunal,
   'D' Bench, Chennai,
   Rajaji Bhavan, Besant Nagar,
   Chennai 600 090.

2. The Deputy Commissioner of Income Tax,
   International Taxation 2(2)
   Chennai 600 006.

+1cc to Mr.Hema Muralikrishnan, Advocate, S.R.No.41781
+1cc to Mr.Sandeep Bagmar, Advocate, S.R.No.41596

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GSP(03/07/2018)