IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.08.2018

C O R A M

THE HON'BLE Mr.JUSTICE K.RAVICHANDRABAABU

W.P.No.16786 of 2018
and
WMP No.19969 and 19970 of 2018

M/s.Cavinkare Private Limited
(Formerly known as M/s.Hemalatha
Enterprises Private Limited),
Represented by its authorized signatory,
Vinoth Kumar SS,
No.12, Cavinville, Cenotaph Road,
Chennai 600 018. ...Petitioner

vs

1.Commissioner of Income-Tax (Appeals)-18,
Chennai Room No.303, Investigation Wing,
New No.46 (Old No.108),
M.G.Road, Nungambakkam,
Chennai 600 034.

2.The Assistant Commissioner of Income Tax,
Central Circle - 2(1), Chennai,
M.G.Road, Nungambakkam,
Chennai 600 034.
...Respondents

Prayer:Writ petition filed under Article 226 of the Constitution of India for issuance of a writ of certiorarified mandamus to call for the records on the file of the first respondent in PAN AAACD2714R passing the order dated 27.06.2018 rejecting the stay petition filed by the petitioner for stay of demand for the Assessment Year 2011-12; quash the same as illegal, arbitrary and devoid of merit and direct the first respondent to grant stay of demand pending disposal of the appeal before the first respondent.

For petitioner : Mr.R.Sivaraman

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

O R D E R

The petitioner Company is aggrieved against the order passed by the first respondent dated 27.06.2018, in and by the said order, the first respondent/Appellate Authority disposed the stay petition filed by the petitioner by granting stay of 80% of the demand only subject to a condition that 20% of the total demand has to be paid by the petitioner immediately.

2.In respect of the Assessment Year 2011-12, the second respondent/Assessing Authority passed an order of assessment dated 30.11.2017. The writ petitioner filed a stay petition before the Assessing Authority and requested to keep the outstanding demands of Assessment Year 2011-12 in abeyance till disposal of the appeal already filed before the first respondent/Appellate Authority. The second respondent by way of an order dated 07.02.2018, directed the petitioner to pay atleast 20% of the disputed demand failing which, it was informed, that the stay petition would be treated as deemed to have been rejected. Challenging the said order, the petitioner filed a writ petition before this Court in W.P.No.3338 of 2018. After hearing both sides, the Writ Court disposed the writ petition on 04.04.2018, by observing that the petitioner has to approach the first respondent/Appellate Authority by way of stay petition and if the stay petition is moved, the first respondent has to consider the prima facie case which the petitioner would place before the Authority and to take a decision on merits and in accordance with law. Thus, the Writ Court kept the said order dated 07.02.2018 in abeyance for a period of four weeks so as to enable the petitioner to file a stay petition before the first respondent in the pending appeal. Consequent to the order passed by this Court, the first respondent passed the present impugned order on 27.06.2018.

3.Mr.R.Sivaraman, learned counsel appearing for the petitioner contended that the first respondent, while disposing the stay petition, has not taken into consideration of the order passed by this Court in W.P.No.3338 of 2018 dated 04.04.2018, wherein this Court has specifically directed the first respondent to consider the prima facie case and to take a decision on merits and in accordance with law in the stay petition. He further invited this Court's attention to the fact that the first respondent has not even referred to the order passed by this Court in the above writ petition, while disposing of the stay petition through the impugned order.

4.The respondents filed a counter affidavit. However, Mr.A.P.Srinivas, learned Senior Standing Counsel appearing for the respondents submitted that since the first respondent directed the petitioner to pay only 20% of the total demand, the said order need not be interfered with.

5.Heard Mr.R.Sivaraman, learned counsel appearing for the petitioner and Mr.A.P.Srinivas, learned Senior Standing Counsel appearing for the respondents and perused the materials placed before this Court.

6.It is not in dispute that the petitioner has earlier approached this Court and filed writ petition in W.P.No.3338 of 2018 as stated supra, wherein an order came to be passed on 04.04.2018, after hearing both sides. Paragraph Nos.10 and 11 of the said order read as follows:

> "10.Thus, in my considered view, this is a fit case, where the petitioner has to approach the first respondent by way of a stay petition. This so because, according to the assessee, identical issue is pending in appeals for the earlier assessment years and those appeals are pending before the first respondent at various stages. However, the petitioner has not prayed for any stay in those appeals, because taxes have been remitted without prejudice. Thus, the petitioner has to necessarily move the first respondent by way of a stay petition, and if such petition is moved, then it is open to the first respondent to consider the prima facie case which the petitioner would place before the authority and take a decision on merits and in accordance with law.
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> 11.In the light of the above, the impugned communication dated 07.02.2018, is directed to be kept in abeyance for a period of four weeks from the date of receipt of a copy of this order. Within such time, the petitioner is directed to file a stay petition before the first respondent in the pending appeal dated 25.01.2018, and such stay petition shall be heard on merits and in accordance with law preferably within a period of three weeks from the date on which the stay petition is filed. No costs. Consequently, connected miscellaneous petitions are closed."

7.Therefore, it is evident that the respondents are fully aware of the order passed by this Court in the above writ petition. However, the first respondent, while disposing the stay petition on 27.06.2018, the order impugned in this writ petition, has not even referred to the order passed by this Court in the earlier writ petition, where a specific direction was issued to the first respondent to hear the stay petition on merits and take a decision in accordance with law, also by observing that the first respondent has to consider a prima facie case which the petitioner would place before him. On the other hand, he has simply disposed the stay petition without there being any discussion much less expressing a prima facie view as to why 20% of the total demand is directed to be paid by the petitioner, while granting stay for the balance demand.

8.Therefore, it is apparent that the first respondent, apart from not following the order passed by this Court in W.P.No.3338 of 2018, appears to have not applied his mind while disposing the stay petition in the absence of any prima facie view expressed therein. Therefore, this Court is satisfied to set aside the order passed by the first respondent impugned in this writ petition and remit the matter back to the first respondent for passing an order afresh, as directed by this Court in W.P.No.33338 of 2018 dated 04.04.2018. This Court makes it clear that it is not expressing any view on the merits of the contentions made by the writ petitioner either in respect of the merits of the assessment or in respect of the stay petition, as it is for the first respondent/Appellate Authority to consider the same and decide. Accordingly, the writ petition is allowed and the impugned order is set aside. Consequently, the matter is remitted back to the first respondent for passing a fresh order on the stay petition, as directed by this Court in W.P.No.3338 of 2018 dated 04.04.2018 within a period of two weeks from the date of receipt of a copy of this order. Till an order is passed by the first respondent as directed supra, no coercive steps shall be taken against the petitioner. No costs. The connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS-IX)

//True Copy//
Sub Assistant Registrar

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To

1.Commissioner of Income-Tax (Appeals)-18, Chennai
Room No.303, Investigation Wing, New No.46 (Old No.108),
M.G.Road, Nungambakkam, Chennai 600 034.

2.The Assistant Commissioner of Income Tax,
Central Circle - 2(1), Chennai,
M.G.Road, Nungambakkam,Chennai 600 034.

+ 1 cc to Mr. A.P.Srinivas, Advocate Sr.55006

W.P.No.16786 of 2018

(CS-IX)
EU(21/08/2018)