IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.11.2018

CORAM

THE HONOURABLE MR.JUSTICE K.RAVICHANDRABAABU

Writ Petition No.27614 of 2018
and
WMP.Nos.32152 & 32156 of 2018

M/s.Cavinkare Private Limited
(formerly known as M/s.Hemalatha
Enterprises Private Limited)
Rep. by its authorized signatory
L.Krishna Kumar
No.12, Cavinville, Cenotaph Road,
Chennai - 600 018. ... Petitioner

vs.

1. The 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
Investigation Wing, Room No.122
1st floor, New No.46, M.G.Road,
Nungambakkam
Chennai - 600 034.

3. The Principal Commissioner of Income Tax
Central Circle -2, Chennai
M.G. Road, Nungambakkam
Chennai - 600 034.

4. The Manager
Federal Bank
62, Mount Road
Chennai - 600 002. ...Respondents

Writ petition filed under Article 226 of the Constitution of India praying to issue a Certiorarified Mandamus, calling for the records on the file of the first respondent in ACIT/C.Cir 2 (1) Recovery/18-19 passing the order dated 11.10.2018 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 second 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 for R1 to R3

O R D E R

The present writ petition is filed against the proceedings dated 11.10.2018 issued by the second respondent, calling upon the petitioner to attend the office of the second respondent on 15.10.2018 along with proof for payment of outstanding demand.

2. Heard Mr.R.Sivaraman, learned counsel for the petitioner and Mr.A.P.Srinivas, learned Senior Standing Counsel for the respondents 1 to 3.

3. For the assessment year 2011-12, the Assessing Authority has passed an order on 30.11.2017. Challenging the said order, the Assessee has filed an appeal before the first respondent along with the stay petition. The said stay petition was disposed of on 27.06.2018 by granting stay of 80% of the demand subject to a condition that 20% of the total demand has to be paid by the petitioner. As the said order of the Appellate Authority was not in consonance with the directions issued by this Court in the earlier writ petition filed in W.P.No.3338 of 2018, the petitioner approached this Court and filed another writ petition in W.P.No.16786 of 2018, challenging the said order dated 27.06.2018 passed by the Appellate Authority.

4. This Court disposed of the said writ petition on 09.08.2018 by allowing the writ petition and setting aside the impugned order and consequently, remitting the matter back to the Appellate Authority to pass fresh orders on the stay petition within a period of two weeks. Thereafter, the Appellate Authority, by order dated 24.09.2018 rejected the stay petition by posting the appeal itself for early hearing. It is stated that the Appellate Authority thereafter heard the appeal and reserved the matter for orders on 25.09.2018. In pursuant to the disposal of the stay petition by the Appellate Authority on 24.09.2018, the present impugned communication was issued by the second respondent on the reason that the Appellate Authority has disposed of the stay petition and thus, the Assessee is in default, as they have not paid the outstanding arrears. Therefore, the present writ petition is filed questioning the above said impugned order.

5. The learned counsel for the petitioner submitted that in pursuant to issuance of the impugned order, the bank account of the petitioner was attached and 20% of the demand has also been recovered. Therefore, he submitted that further recovery should not be made since the Appellate Authority has already reserved the matter for orders.

6. On the other hand, the learned Senior Standing Counsel for the respondents submitted that in the absence of any stay granted by the Appellate Authority, 20% of the demand recovered from the petitioner in pursuant to the impugned order cannot be found fault with.

7. There is no dispute to the fact that the very same Appellate Authority has already passed an order on 27.06.2018 granting stay of 80% of the demand subject to the condition that the petitioner pays 20% of the total demand. No doubt, that the said order was set aside and the matter was remitted back to the Appellate Authority for passing fresh orders in the stay petition. It is true that the stay petition was dismissed by the Appellate Authority and the appeal itself was heard and reserved for orders.

8. However, as the fact remains that 20% of the total demand has been recovered from the petitioner in pursuant to the impugned order dated 11.10.2018, this Court is of the view that interest of justice would be met, if the respondents are directed not to make any further recovery till an order is passed by the Appellate Authority in the appeal filed by the petitioner, which is reserved for orders on 25.09.2018. Therefore, this writ petition is disposed of as follows:

(a) The first respondent-Appellate Authority shall pass orders in the appeal within a period of 12 weeks from the date of receipt of a copy of this order, since it is stated that there is some change of officer.

(b) Till an order is passed by the first respondent in the appeal as stated supra, no further recovery shall be made from the petitioner in pursuant to the impugned order.

(c) The respondents 2 and 3 are also directed not to treat the petitioner as an Assessee in default, since 20% of the demand, pending appeal has been recovered from the petitioner.

(d) It is made clear that this Court is not expressing any view on the merits of the assessment order or the appeal filed by the petitioner, as it is for the first respondent-Appellate Authority to consider and decide the same.

No costs. Connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

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To

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   Federal Bank
   62, Mount Road, Chennai -600 002

+1 cc to Mr.A.P.Srinivas, Advocate Sr.No.78485
+1 cc to Mr.R.Sivaraman, Advocate Sr.No.78523

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SKV(CO)
CSL/07.12.2018