IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.11.2018

CORAM:

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
and
THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

W.P.Nos.29564, 29570, 29576, 29585,
29586, 29589 and 29592 of 2018
and Connected Miscellaneous Petitions

M/s.Royal Sundaram General Insurance Co. Ltd.,
Sundaram Towers,
45 and 46, Whites Road,
Chennai - 600 002.
Represented by Managing Director
Mr.M.S.Sreedhar ...(Petitioner in all WP's)

-vs-

1.The Deputy Commissioner of Income Tax,
Large Tax payer Unit,
121, M.G.Road,
Chennai - 600 034.

2.The Assistant Registrar,
Income Tax Appellate Tribunal,
Rajaji Bhawan,
Besant Nagar, Chennai - 600 090.
....(Respondents in all WP's)

W.P.No.29564 of 2018:
Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified mandamus, calling for the records relating to the order of the Income Tax Appellate Tribunal/2nd respondent in S.P.Nos.326/Chny/2018 dated 26.10.2018 for the Assessment Years 2009-10 in the case of the petitioner and quash the same and direct the 2nd respondent to grant stay of collection of demand till the disposal of the appeal.

WP No.29570 of 2018:
Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified mandamus,calling for the records relating to the order of the Income Tax Appellate Tribunal/2nd Respondent in S.P.Nos.327/chny/2018 dated 26.10.2018 for the Assessment year 2010 -11in the case of the petitioner and quash the same and direct the 2nd

respondent to grant stay of collection of demand till the disposal of appeal

WP No.29576 of 2018:
Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified mandamus,calling for the records relating to the order of the Income Tax Appellate Tribunal/2nd Respondent in S.P.Nos.328/chny/2018 dated 26.10.2018 for the Assessment year 2011 -12 in the case of the petitioner and quash the same and direct the 2nd respondent to grant stay of collection of demand till the disposal of appeal

WP No.29585 of 2018:
Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified mandamus,calling for the records relating to the order of the Income Tax Appellate Tribunal/2nd Respondent in S.P.Nos.329/chny/2018 dated 26.10.2018 for the Assessment year 2011-12 in the case of the petitioner and quash the same and direct the 2nd respondent to grant stay of collection of demand till the disposal of appeal

WP No.29586 of 2018:
Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified mandamus,calling for the records relating to the order of the Income Tax Appellate Tribunal/2nd Respondent in S.P.Nos.330/chny/2018 dated 26.10.2018 for the Assessment year 2012-13 in the case of the petitioner and quash the same and direct the 2nd respondent to grant stay of collection of demand till the disposal of appeal

WP No.29589 of 2018:
Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified mandamus,calling for the records relating to the order of the Income Tax Appellate Tribunal/2nd Respondent in S.P.Nos.331/chny/2018 dated 26.10.2018 for the Assessment year 2013 -14 in the case of the petitioner and quash the same and direct the 2nd respondent to grant stay of collection of demand till the disposal of appeal

WP No.29592 of 2018:
Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified mandamus,calling for the records relating to the order of the Income Tax Appellate Tribunal/2nd Respondent in S.P.Nos.332/chny/2018 dated 26.10.2018 for the Assessment year 2014-15 in the case of

the petitioner and quash the same and direct the 2nd respondent to grant stay of collection of demand till the disposal of appeal

For Petitioners : Mr.Vijay Narayan
Senior Counsel
for Mr.R.Venkat Narayanan
(in all WPs)

For Respondents: Ms.Hema Muralikrishnan
Senior Standing Counsel
(in all WPs)

C O M M O N O R D E R

[Order of the Court was delivered by
T.SIVAGNANAM,J.]

These writ petitions have been filed by the petitioner viz., M/s.Royal Sundaram General Insurance Company Limited. The challenge in these writ petitions is to the common order passed by the Income Tax Appellate Tribunal 'D' Bench, Chennai in the stay petitions filed by the assessee in the pending appeals, in which the assesse has challenged the orders of assessment. The Tribunal by the impugned order has dismissed the stay petitions holding that there are no convincing reasons to establish a prima facie case in favour of the assessee with respect to the issues raised in the appeal.

2. Mr.Vijay Narayan, learned Senior Counsel assisted by Mr.Venkat Narayanan, learned counsel for the petitioner submitted that in a similar case pertaining to another Insurance Company viz. M/s.United India Insurance Company Limited, the Tribunal has heard the appeals finally and has passed a final order dated 28.08.2018. In the said order, there were two issues, one pertaining to re-insurance and the other deduction under Section 37(1) of the Income Tax Act, 1961. Referring to Para 71 of the order passed by the Tribunal in I.T.A.No.2107/Chny/2008 dated 28.08.2018, it is submitted that so far as the claim for deduction under Section 37(1) of the Act with regard to the services actually rendered by motorcar dealers to the assessee company, the Tribunal has held in favour of M/s.United India Insurance Company Limited and therefore to that extent, the Tribunal should have considered the assessees' case for grant of appropriate interim orders.

3. Ms.Hema Muralikrishnan, learned Senior Standing Counsel who accepted notice on behalf of the respondents submitted that the second set of stay petitions filed by

the assessee, in which the impugned orders have been passed is not maintainable since already the Tribunal has passed an order dated 12.01.2018 in S.P.Nos.1 to 4 and 5 to 8/Mds/2018, wherein, a conditional order has been granted and abruptly after May 2018, the assessee has stopped complying with the conditional order and come forward with fresh stay petitions, which were rightly rejected by the Tribunal.

4. In reply, Mr.Vijay Narayan, learned Senior Counsel submitted that the Tribunal commenced hearing of the main appeals and in the interregnum, the appeals stood adjourned sine die. Fearing recovery proceedings, the assessee had filed fresh set of stay petitions.

5. After elaborately hearing the learned Senior Counsel for the petitioner and the learned Senior Standing Counsel for the respondents and perusing the materials placed on record, we find absolutely there is no error in the order passed by the Tribunal in rejecting the stay petitions. We may add few reasons in addition to what has been said by the Tribunal in the impugned order. Firstly, as noticed above, the assessee had filed stay petitions Nos. 1 to 4 and 5 to 8/Mds/2018, which were partly allowed by order dated 12.01.2018. The operative portion of the order reads thus:-

> "5. We have considered the rival submissions. Without going into the merits of the appeals filed by the assessee and considering the fact that the demand is for all the seven years put together nearly Rs.200.00Crs. against which the assessee had paid only Rs.15.00 Crs, the assessee is granted an installment scheme of Rs.7.00 Crs. per month representing an installment of Rs.1.00 Cr. for each of the assessment years in respect of the appeals which the Stay Petitions have been filed. The first installment is to paid on or before 16.01.2018 and the subsequent installments to be paid on or before 15th of every succeeding month. The appeals of the assessee have been filed on 08.01.2018 and consequently, Registry is directed to post the appeals of the assessee on 19.03.2018. No notice to be issued to the parties as the order has been pronounced in the open court.
> 6. In the result, the Stay Petitions filed by the assessee are partly allowed."

6. In terms of the above order, the first instalment was payable on or before 16.01.2018 and subsequent instalments to be paid on or before 15^{th} of every succeeding month. It is not disputed by the assessee

that they had complied with the condition but only upto May 2018. It is not clear as to why the assessee abruptly failed to comply with the conditional order passed by the Tribunal. The explanation offered by the assessee is that the Tribunal commenced hearing of the appeals. This cannot be an answer since as long as the interim order continues to remain intact, the assessee is bound by it and has to comply with the order in its letter and spirit till the disposal of the main appeal by the Tribunal. Therefore, we do not appreciate the conduct of the assessee in abruptly failing to comply with the conditional stay order dated 12.01.2018 and filing fresh set of stay petitions, which are not maintainable and therefore that is one more reason to reject the stay petitions apart from the reasons assigned by the Tribunal.

7. We are informed that the Tribunal has adjourned the matter to 13.11.2018. Since the interim order passed by the Tribunal dated 12.01.2018 binds the assessee, they have to comply with the same. However, it is well open to the assessee to seek for other prayers before the Tribunal, if so advised. It is submitted by the learned Senior Counsel for the assessee that the application filed for modification of the order dated 12.01.2018 is pending. We refrain from making any observation at this juncture and it is well open to the assessee to pursue their claims before the Tribunal.

8. With the above observations, the writ petitions stand dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(Ccc)

//True Copy//

Sub Assistant Registrar

svki/mrm

To

1.The Deputy Commissioner of Income Tax,
Large Tax payer Unit,
121, M.G.Road,
Chennai - 600 034.

2.The Assistant Registrar,
Income Tax Appellate Tribunal,
Rajaji Bhawan,
Besant Nagar, Chennai - 600 090.

+1cc to Mr.Subbarama Aiyar , Advocate SR.No. 77011
+1cc to Ms.Hema Muralikrishnan , Advocate SR.No.77132

W.P.Nos.29564, 29570, 29576, 29585,
29586, 29589 and 29592 of 2018

ASK(12/11/2018)