IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.11.2018

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

AND

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

W.P.No.31440 of 2018 and

W.M.P.No.36634 of 2018

M/s.Tamilnadu Water Investment Company Limited,
Rep. by its Director Mr.L.Krishnan
First Floor, Poly House Towers,
No.86, Mount Road, Guindy.
Chennai - 600 032. ...Petitioner

Vs

1.The Assistant Commissioner of Income Tax,
Corporate Circle - 3(1)
Wanaparthy Block, 4th Floor,
121, Mahatma Gandhi Road,
Nungambakkam, Chennai - 600 034.

2.The Income Tax Appellate Tribunal
'D' Bench, Chennai,
A-3, 2nd Floor, Rajaji Bhavan,
Besant Nagar, Chennai - 600 090. ... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for a Writ of Certiorarified mandamus, calling for the records in S.P.No.344/Chny/2018 in ITA No.3106/Chny/2017 dated 16.11.2018 on the file of the 2nd respondent relating to the Assessment Year 2008-09 and quash the same and direct the 2nd respondent to grant absolute stay of recovery proceedings till the disposal of the appeal before it.

For Petitioner : Mr.G.Baskar

For Respondents : Mr.J.Narayanasamy
Standing Counsel

O R D E R

[Order of the Court was made by

T.S.SIVAGNANAM.,J.]

This writ petition has been filed by the assessee, which is an investment company promoted jointly by the Government of Tamil Nadu and M/s.Infrastructure Leasing and Financial Services Limited. The order impugned in this writ petition is to the order passed by the Income Tax Appellate Tribunal 'D' Bench, Chennai, made in S.P.No.344/Chny/2018 in I.T.A.No.3106/Chny/2017 dated 16.11.2018 pertaining to the assessment year 2008-09.

2. The Assessee has filed the appeal before the Tribunal challenging the order passed by the Commissioner of Income Tax (Appeals) dated 29.08.2017, who confirmed the re-assessment order dated 24.03.2016. At the time when the appeal was filed, the petitioner company filed stay petition in S.P.No.139/2018. The Tribunal heard the arguments of the petitioner in the stay petition as well as the representative of the department and granted an order of interim stay on 23.03.2018. The operative portion of the order reads as follows:-

> "6. Considering the fact that the assessee is being treated as Nodal Agency in respect of the Effluent Treatment Plant to be sett up in the state of Tamil Nadu and as the grants have been received for this purpose only, we are of the view that the said grants cannot be used for other purposes other than the purpose for which it has been given. Consequently, we are of the view that the assessee is entitled to stay of recovery of the disputed taxes. The balance of the taxes stands stayed for a period of six months from today or the disposal of the appeal of the assessee, whichever is earlier. In the event that the assessee moves adjournment on the date of hearing of the appeal, the stay granted shall stand vacated.
> 7. In the result, the Stay Petition filed by the assessee is allowed."

3. In terms of the above order, the petitioner was entitled to stay of recovery of disputed taxes and the stay was for a period of six months from the date of the order or till the disposal of the appeal by the Tribunal, whichever is earlier. The Tribunal also imposed another condition on the petitioner to the effect that if the petitioner moves for adjournment on the date of hearing of the appeal, stay granted shall stand vacated.

4. The appeal was listed for hearing before the Tribunal on 20.06.2018. The petitioner did not seek for an adjournment but the Department sought for an adjournment and that request was accepted by the Tribunal and the case stood posted on 01.10.2018. It appears that on 01.10.2018, the Tribunal was not sitting and consequently, the Registry of the Tribunal re-posted the case on 22.10.2018. On 22.10.2018, once again the Tribunal was not sitting and the Registry of the Tribunal re-posted the matter to 30.10.2018. On 30.10.2018, the assessee represented to the Tribunal for a short accommodation on the ground that Senior Counsel has been engaged by the petitioner and requested the matter be taken up on 01.11.2018. Thus, the petitioner had sought for accommodation by a day. However, the Tribunal did not accept the said request and the stay stood vacated and the appeal was posted to 08.04.2019. Since there is a threat of recovery being made by the Department, the assessee filed a fresh stay petition in S.P.No.344/2018. The Tribunal by the impugned order has observed that without going into the merits of the case, the petitioner was granted the instalment scheme of Rs.50.00 lakhs per month and the first of such instalment to be paid on or before 30.11.2018 and the subsequent instalments to be paid on or before 30th of every succeeding month. It was further ordered if the petitioner violates the installment scheme granted, the stay granted shall stand vacated. Once again the Tribunal imposes a similar condition that if the petitioner seeks adjournment on the date of hearing, installment scheme granted to the petitioner shall stand vacated. This order dated 16.11.2018 is impugned before us.

5. We have heard Mr.G.Baskar, learned counsel for the petitioner and Mr.J.Narayanasamy, learned Standing Counsel for the respondent/revenue.

6. After elaborately hearing the learned counsel for the parties and carefully perusing the materials placed on record, we are of the considered view that the order passed by the Tribunal is erroneous. We support such conclusion with the following reasons:-

i) It is elementary legal principal that for a petitioner to be entitled for an interim protection or an interim order, they have to establish a prima facie case, that the balance of convenience is in their favour and if interim protection is not granted, they will be put to irreparable hardship. Thus, the Court of law or the Tribunal should consider the prayer for interim relief bearing in mind the above three cardinal principles. In fact, the Tribunal while considering the first stay petition in S.P.No.139/2018 had taken note of the above three cardinal principles and by a reasoned order dated 23.03.2018 had granted an order of stay of recovery. What had weighed in the minds of the Tribunal was that the petitioner is a nodal agency in respect of the Effluent Treatment Plant to be set up in the State of Tamil Nadu and as the grants have been received for this purpose only and therefore, the Tribunal was of the view that grants cannot be used for other purposes other than the purpose for which it has been given. Consequently, the Tribunal being satisfied that the petitioner has made out a case for grant of interim protection granted an order of stay. However, the Tribunal restricted the stay for a period of six months from the date of the order or till the disposal of the appeal, whichever is earlier. However, when the second stay petition was heard by the Tribunal, the Tribunal did not consider the reasons given by it in its earlier order dated 23.03.2018 but stated that they have looked into the cash flow and financial of the petitioner and considering the facts of the case and without going into the merits granted the installment scheme of Rs.50.00 lakhs per month.

ii) The reason assigned by the Tribunal is not tenable because, the Tribunal at least should have endeavoured to discuss the prima facie merits of the case and there cannot be an order stating that without going into the merits, there will be an interim order. This is also one more reason to hold that the impugned order is not tenable. That apart, the reasons assigned by the Tribunal in its order dated 23.03.2018 ought to have been discussed by the Tribunal and without even making a reference to the same, the Tribunal could not have passed the impugned order. One more issue which we wish to point out is that while passing the order dated 23.03.2018, the Tribunal granted an order of stay for a period of six months from the date of the order or till the disposal of the appea,l whichever is earlier. The petitioner was put under a condition that if they seek adjournment, the stay would be vacated. If such a condition is imposed on the petitioner by the Tribunal, the Tribunal should definitely endeavour to dispose of the appeal within the six months' period. If for any reason not attributable to the petitioner, the Tribunal adjourns the matter, then the order of interim stay should stand automatically extended. Therefore, the correct way of passing such orders fixing time limit would be to state that the order of stay will be for a period of six months or till the disposal of the appeal, whichever is later. If this approach is adopted, which is adopted by this Court consistently, the controversy which has arisen in the present case could have been avoided. That apart, from the dates and events which we have mentioned above, we find that there is no allegation against the assessee that they were dragging on the matter. As could be seen, the assessee sought for adjournment only on 30.10.2018. On the two earlier dates, the case stood re-posted because the Tribunal was not sitting and on the first hearing date, the Department took adjournment. Therefore, the Tribunal could have adopted a reasonable approach in the instant case especially when the assessee sought for adjournment for only a day and that too for the reason that they have engaged the services of a learned Senior Counsel.

7. Thus, for the above reasons, we are of the considered view that the impugned order calls for interference. Accordingly, the writ petition is allowed and the impugned order is quashed. There will be an order of stay of recovery of the disputed tax till the disposal of the appeal by the Tribunal. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

To

1.The Income Tax Appellate Tribunal
'D' Bench, Chennai,
A-3, 2nd Floor, Rajaji Bhavan,
Besant Nagar, Chennai - 600 090.

2.The Commissioner of Income Tax (Appeals)-II,
121 Mahatma Gandhi Road,
Chennai-34.

3.The Assistant Commissioner of Income Tax,
Corporate Circle - 3(1)
Wanaparthy Block, 4th Floor,
121, Mahatma Gandhi Road,
Nungambakkam, Chennai - 600 034.

+1cc to M/s.G.Baskar, Advocate Sr.81110

W.P.No.31440 of 2018

sai[co]
srg 24/12/2018