THE HON'BLE SRI JUSTICE SANJAY KUMAR
AND
THE HON'BLE SRI JUSTICE T.AMARNATH GOUD

WRIT PETITION NO.7795 of 2018

ORDER: (per SK,J)

The Hyderabad Metropolitan Development Authority, the petitioner herein, seeks the following reliefs:

> 'For the reasons stated in the accompanying affidavit, it is hereby prayed that this Hon'ble Court may be pleased to issue a Writ, Order or Direction one in the nature of Mandamus, or any other Writ, to declare:
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> i) the order dated 12.02.2018, passed by the 1st Respondent, directing payment of 20% of Rs.118,58,66,530/-, being the demand raised by him vide his assessment order dated 22.12.2017, for the Assessment Year 2015-16, pending disposal of the Petitioner's appeal before the 3rd Respondent, as arbitrary, illegal, without jurisdiction, violative of principles of natural justice and consequently set aside the same in the interests of justice; and
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> ii) the order dated 01.03.2018 (received on 05.03.2018) of the 2nd Respondent, rejecting the application of the Petitioner for the Assessment Year 2015-16, while confirming the order of the 1st Respondent dated 12.02.2018, as unjust, illegal, arbitrary and violative of principles of natural justice and consequently set aside the same in the interests of justice;
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> and grant stay of all further proceedings including recovery pursuant to the Assessment Order passed by the 1st Respondent dated 22.12.2017, pending disposal of the Petitioner's appeal before the 3rd Respondent and to pass such other order or orders as this Hon'ble Court may deem fit, just and proper in the circumstances of the case.'

It is not in dispute that by order dated 31.10.2017 passed in I.T.A.No.3/Hyd/2017 and batch, the Income Tax Appellate Tribunal, Hyderabad Bench 'B', Hyderabad, held the petitioner authority eligible for registration under Section 12AA of the Income-tax Act, 1961 (for short, 'the Act of 1961') with effect from 01.04.2002. The Tribunal accordingly directed the Commissioner of Income Tax (Exemptions) to modify the order of registration to one under Section 12AA of the Act of 1961 with effect from 01.04.2002, i.e., from the Assessment Year 2003-04 onwards. In consequence, as the petitioner authority was held entitled for such registration, the Tribunal set aside the assessments made from the Assessment Year 2009-10 onwards and remanded the matters to the file of the Assessing Officer for re-consideration of the issues in the light of the registration granted to the petitioner authority under Section 12AA of the Act of 1961 with effect from 01.04.2002.

Though J.V.Prasad, learned senior standing counsel for the respondent, would state that the Revenue filed an appeal against the aforestated common order dated 31.10.2017 passed by the Tribunal, he concedes that no interim relief was either sought or granted in the said appeal.

While matters stood thus, it appears that the Assistant Commissioner of Income Tax (Exemptions), Hyderabad, passed assessment order dated 22.12.2017 in relation to the Assessment Year 2014-15. This assessment was undertaken without reference to the registration of the petitioner authority under Section 12AA of the Act of 1961 with effect from 01.04.2002 as directed by the Tribunal. Aggrieved by the said assessment order, the petitioner authority filed an appeal before the Commissioner of Income Tax (Exemptions), Hyderabad, on 29.01.2018. Pending the disposal of the said appeal, the petitioner authority sought stay of collection of the tax demanded in terms of the assessment order under appeal. However, by communication dated 12.02.2018, the Assistant Commissioner of Income Tax (Exemptions) required the petitioner authority to pay 20% of the total demanded amount within three days of the receipt of the letter as a condition precedent for granting stay in relation to the balance demanded amount. Aggrieved by this communication, the petitioner authority is before this Court.

The petitioner authority also lays a challenge to the order dated 01.03.2018 passed by the Commissioner of Income Tax (Exemptions), Hyderabad, confirming the direction to pay 20% of the demanded amount pending the appeal. Perusal thereof reflects that the Commissioner was of the opinion that as the petitioner authority consistently earns income from commercial activities and was in a sound financial position, it should endeavour to pay the amount within the time stipulated.

Given the aforestated facts, it is clear that the assessment order under appeal, which was without reference to the fact that the petitioner authority is entitled to registration under Section 12AA of the Act of 1961, which would open up the door to seek exemption under Section 11 of the Act of 1961, *prima facie,* would be on par with the other assessment orders since the year 2009-10, which have already been set aside. That being so, requiring the petitioner authority to make payment of 20% of the demanded amount as a condition precedent for staying collection of the tax assessed and due in terms of the said assessment order cannot be sustained.

The writ petition is accordingly allowed setting aside the orders dated 12.02.2018 and 01.03.2018. The appeal filed by the petitioner authority before the Commissioner of Income Tax (Appeals), Hyderabad, in relation to the assessment order dated 22.12.2017 for the Assessment Year 2014-15 shall be considered and adjudicated on merits without insisting upon payment of 20% of the tax demanded. This appeal shall be disposed of expeditiously and in accordance with law keeping in mind the common order passed by the Tribunal in I.T.A.No.3/Hyd/2017 and batch.

Pending miscellaneous petitions, if any, shall stand closed in the light of this final order. No order as to costs.

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SANJAY KUMAR,J

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T.AMARNATH GOUD,J

Date:11.06.2018

GJ