**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

1. CWP No.10705 of 2015
Date of decision : 26.07.2018

Principal Commissioner of Income Tax, Bathinda .... Petitioner

VS

M/s HPCL Mittal Energy Ltd. and another
...... Respondents

2. CWP No.10804 of 2015

Principal Commissioner of Income Tax, Bathinda .... Petitioners

VS

M/s HPCL Mittal Pipelines Ltd. and another
...... Respondents

3. CWP No.14318 of 2015

Principal Commissioner of Income Tax, Bathinda .... Petitioners

VS

M/s HPCL Mittal Pipelines Ltd. and another
...... Respondents

**CORAM: HON'BLE MR. JUSTICE AJAY KUMAR MITTAL
HON'BLE MR. JUSTICE AVNEESH JHINGAN**

Present:- Mr.Rohit Jain, Advocate
for the petitioners.

Mr. Dinesh Goyal, Senior Standing Counsel
for the Revenue.

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AVNEESH JHINGAN, J.

This order shall dispose of three writ petitions bearing CWP Nos. 10705, 10804 and 14318 of 2015. The assessment years involved are

2008-09 in CWP Nos.10705 and 10804 of 2015. In CWP No.14318 of 2015, assessment year is 2009-10. As the facts are common and issue involved is same, these are being disposed of by a common order.

For the sake of convenience, the facts are being taken up from CWP No.10705 of 2015.

The Principal Commissioner of Income Tax filed the writ petition seeking quashing of order dated 30.09.2014 (Annexure P-6) passed by Income Tax Appellate Tribunal, Amritsar (for short, 'ITAT') granting stay of penalty during the pendency of the appeal.

In the writ petition, M/s HPCL Mittal Energy Ltd. and Income Tax Appellate Tribunal, Amritsar Bench, Amritsar have been arrayed as respondents No.1 and 2 respectively.

The assessee filed the original return for the assessment year 2008-09 on 30.09.2008 declaring income of ₹23,61,30,520/-. The return was revised on 09.09.2009 declaring total income as Nil. Current year loss of business was declared claiming a refund of ₹8,15,93,109/-. Another revised return was filed on 30.09.2009, the refund claim remained the same. A notice under Section 143(2) of Income Tax Act, 1961 (for short, 'the Act') was issued on 13.03.2009. Assessment was framed vide order dated 30.11.2010 under Section 143(3) of the Act and penalty proceedings under Section 271 (1)(c) of the Act for concealment of Income were initiated separately.

Being aggrieved of the assessment order, the assessee filed an appeal before the Commissioner of Income Tax (Appeals). The appeal was dismissed vide order dated 28.03.2013. Further, an appeal was filed before ITAT, the same was dismissed vide order dated 31.12.2013.

On 30.11.2010, a notice for penalty under Section 271(1)(c) of the Act was issued. The assessee filed a written reply on 22.12.2010, and ultimately, penalty was imposed vide order dated 18.02.2014.

The assessee filed an appeal, which was dismissed by Commissioner of Income Tax (Appeals) on 02.07.2014. Feeling aggrieved further, appeal was filed before ITAT along with stay application. The Tribunal vide order dated 30.09.2014 granted stay. The relevant portion of the order is reproduced below:-

> *"In view of the above discussion, the assessee, has, prima facie, a good case on the legal issue as well on merit in their favour, due to which, the balance of convenience lies in their favour, and also, the assessee would subjected to irreparable loss, if in the facts and circumstances of the case, as considered above, the stay is not granted to the assessee.*
>
> *Apropos the attachment order passed by the AO and recovery made, it is patent on record that vide letter dated 17.09.2014, the AO stood specifically informed of the pendency of the appeals as well as the stay applications before the Tribunal, still he went ahead and illegally attached the bank accounts and made unsustainable recovery. Accordingly, the attachment orders are hereby lifted and the AO is directed to refund the amount of the assessee immediately.*
>
> *Since the applications/letters in this regard have been filed before us today, no separate order in this regard needs to be issued. Ordered accordingly.*
>
> *In the result, all the three Stay Applications*

filed by the assessees are allowed. The connected main appeals are directed to be fixed for hearing on merit, for 17.11.2014."

Not satisfied with the said order, the present writ petition was filed.

During the pendency of the writ petitions, the appeals against the penalty order passed under Section 271(1)(c) of the Act was heard by the Tribunal on 26.08.2015. There was a difference of opinion between the members and the matter was referred to the third member. The third member vide order dated 07.05.2018 rendered his opinion. The Tribunal vide order dated 20.06.2018 as per the majority opinion allowed the appeals of the assessee and quashed the penalty.

In other words, appeals against the penalty order has been decided on merits and the levy of penalty has been set aside. The present writ petition has been rendered infructuous as the challenge was only against the interim order passed by Tribunal granting stay.

The writ petitions are, therefore, disposed of as infructuous.

(AJAY KUMAR MITTAL)
JUDGE

(AVNEESH JHINGAN)
JUDGE

26.07.2018
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Whether speaking/reasoned? Yes/No
Whether reportable? Yes/No