In the High Court of Judicature at Madras

Dated : 09.1.2019

Coram :

The Honourable Mr.Justice T.S.SIVAGNANAM
and
The Honourable Mr.Justice N.SATHISH KUMAR

Writ Petition No.200 of 2019 &
WMP.No.213 of 2019

M/s.S.P.Mani and Mohan Diary,
Erode-2 ...Petitioner

Vs

1.The Deputy Registrar,, rep.by the
Income Tax Appellate Tribunal
'D' Bench, Rajaji Bhavan,
Besant Nagar, Chennai-90.

2.The Assistant Commissioner of
Income Tax, Central Circle I,
Gandhiji Road, Erode-1. ...Respondents

PETITION under Article 226 of The Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus to call for the records of the first respondent in S.P.No.388/CHNY/2018 in ITA No.1321/Chny/2018, quash the impugned order dated 14.12.2018 (served on the petitioner on 21.12.2018) passed therein and further direct the first respondent to grant absolute stay of the collection of disputed taxes in the light of the orders already passed by the first respondent for earlier assessment years in the petitioner's own case in ITA No.1810/Mds/2016 dated 05.8.2016 for AY 2012-13 and ITA No.3053/Mds/2016 dated 26.7.2017 for AY 2013-14.

For Petitioner :Mr.R.L.Ramani for Mr.B.Raveendran
For Respondent-2 :Mr.A.P.Srinivas, SSC

Order of the Court was made by T.S.SIVAGNANAM,J

We have heard the learned counsel on either side.

2. This writ petition has been filed by the assessee registered on the file of the second respondent under the provisions of the Income Tax Act, 1961 (for brevity, the Act) questioning the correctness of the order passed by the Income

Tax Appellate Tribunal 'D' Bench, Chennai (for short, the Tribunal) in S.P.No.388/CHNY/2018 in ITA No.1321/Chny/2018 dated 14.12.2018 for the assessment year 2014-15.

3. The assessee filed the appeal before the Tribunal challenging the order passed by the Commissioner of Income Tax (Appeals) [for brevity, the CIT(A)] in ITA.No.293/2016-17 dated 14.2.2018. Along with the appeal, the assessee filed a petition for stay of the demand. Apart from citing certain reasons as to how they made out a prima facie case on merits, the assessee contended that they paid more than 37% of the tax and interest demanded vide the assessment order dated 30.12.2016. However, the Tribunal, though vide order dated 14.12.2018, confirmed the assessment order under Section 143(3) of the Act dated 30.12.2016, granted time to make payments in instalments.

4. From the appeal papers, we find that the total tax payable is Rs.8,04,29,569/- (Rs.6,21,77,034/- towards tax + Rs.1,82,52,535/- towards interest), that the assessee is stated to have paid a sum of Rs.2,27,32,881/-, which, according to them, is 37% of the demand and that the amount outstanding is Rs.5,76,96,690/-.

5. Mr.R.L.Ramani, learned Senior Counsel appearing on behalf of the petitioner contends that the assessee made out a prima facie case before the Tribunal in as much as the Tribunal granted relief to the assessee for the assessment year 2012-13 vide order dated 05.8.2016 and if the same is considered along with the payment already effected by the petitioner, the Tribunal ought to have granted stay of the remaining amount demanded.

6. Mr.A.P.Srinivas, learned Senior Standing Counsel for the Revenue appearing for the second respondent, at the outset, would submit that the writ petition is not maintainable, as the petitioner has to file a tax case appeal as against the order passed by the Tribunal and that therefore, the writ petition is liable to be dismissed. On the merits of the contentions advanced by the learned Senior Counsel appearing on behalf of the petitioner, it is submitted by the learned Senior Standing Counsel that the issue involved in the earlier assessment years namely 2012-13 and 2013-14 are different and in any event, the Department already filed tax case appeals before this Court as against the orders passed by the Tribunal.

7. In our considered view, we need not labour much on the question of maintainability of the writ petition before this Court in the light of the fact that a workable order, if passed, would safeguard the interest of the Revenue as well as grant reprieve to the assessee.

8. Accordingly, the writ petition is disposed of leaving the issue regarding maintainability open and by directing the petitioner - assessee to pay a sum of Rs.1,50,00,000/- (Rupees

one crore and fifty lakhs only) towards the outstanding tax liability. The said sum shall be paid either in one lumpsum or in instalments on or before 25.3.2019. If the petitioner complies with the said condition, the balance amount demanded shall remain stayed till the disposal of the appeal by the Tribunal, failing which, the benefit of this order will not enure to the petitioner and the writ petition would stand automatically dismissed. No costs. Consequently, the connected WMP is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1.The Deputy Registrar,
the Income Tax Appellate Tribunal 'D' Bench,
Rajaji Bhavan, Besant Nagar, Chennai-90.

2.The Assistant Commissioner of Income Tax,
Central Circle I, Gandhiji Road,
Erode-1.

+1cc to Mr.A.P.Srinivas, Advocate, S.R.No. 2289
+1cc to Mr.B.Ravendran, Advocate, S.R.No. 2430

WP.No.200 of 2019&
WMP.No.213 of 2019

NMI(CO)
GN(14/02/2019)