IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.02.2019

CORAM

THE HON'BLE DR.JUSTICE VINEET KOTHARI
AND
THE HON'BLE MR.JUSTICE C.V.KARTHIKEYAN

Tax Case Appeal No. 111 of 2019
And
C.M.P.Nos. 2955 & 2958 of 2019

M/s. Mosmetro India Private Limited
88/150, Dharma Towers, Second Floor,
Room No. 9, Nelson Manikam Road,
Choolaimedu, Chennai - 94. ... Appellant/Appellant

Vs.

Assessing Officer,
Deputy Commissioner of Income Tax,
Corporate Circle - 4(1)
121, MG Road, Nungambakkam,
Chennai - 34, Tamil Nadu. ...Respondent/Respondent

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Tax Case Appeal filed under Section 260A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal, Madras 'D' Bench, Chennai, dated 21.12.2018 made in SP.No. 380/CHNY/2018 in I.T.(TP).A.No. 79/Chny/2018.

Against the order of the Assistant Commisioner of Income Tax dated 29.10.2018 in PAN/GIR NO. AAHCM57091V in the Assessment year 2014-2015 in the Assessment year 2014-2015.

Against the order of the ministry of Finance Income Tax Department dated 05.09.2018 in the Assessment year 2014-2015.

Against the order of the Deputy Commisioner of Income Tax dated 20.12.2017 in the Assessment year 2014-2015.

Against the order of the Deputy Commisioner of Income Tax dated 30.10.2017 in the Assessment year 2014-2015.

F NO. M505/TPO 3(1)

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For Appellant : Mr.K.Senguttuvan

For Respondent : M/s. Karthik Renganathan
Senior Standing Counsel

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J U D G M E N T

(Delivered by DR.VINEET KOTHARI, J.)

This Appeal has been filed by the Assessee under Section 260-A of the Act against the interim order passed by the learned Income Tax Appellate Tribunal on 21.12.2018 rejecting the stay application filed by the Assessee in a pending appeal for the Assessment Year 2014-2015. The outstanding demand against the Assessee Company for the Assessment Year 2014 is said to be Rs.11,29,18,300/-.

2. The learned counsel for the Assessee urged before us that an Appeal under Section 260-A of the Act lies before the High Court against 'every order' passed by the Appellate Tribunal, if the High Court is satisfied that the case involves a substantial question of law. He has relied upon the decision of the Hon'ble Supreme Court in the case of Rajkumar Shivhare Vs. Assistant Director, Directorate of Enforcement reported in 2010 (253) E.L.T. 3 (S.C.) and the case of Metal Weld Electrodes Vs. CESTAT, Chennai reported in 2014 (299) E.L.T. 3 (Mad.) and submitted that the words 'any' or 'every' would include even the interlocutory orders and therefore, the present Appeal is maintainable.

3. The learned counsel for the Revenue has supported the impugned order passed by the learned Tribunal.

4. Having heard the learned counsels for the parties, though we are of the opinion that such an Appeal from 'every' order passed by the Tribunal in a pending Appeal can be filed before the High Court under Section 260-A of the Act but only if the case involves a substantial question of law. The existence of a substantial question of law in the Appeal filed by any of the parties, namely, Assessee or Revenue is necessary to invoke the jurisdiction under Section 260-A of the Act. The interlocutory orders passed by the Tribunal on a stay application rejecting the stay application filed by the Assessee in the present case, prima facie case does not give rise to any substantial question of law as it is firstly a discretionary order and the grant of a stay or refusal thereof or grant of stay partially, depends upon the facts of each case before the Tribunal. The parameters

for grant of a stay or otherwise will have to be traced back to the provision under Order 41 Rule 5 CPC which requires any Appellate Court, Tribunal or Authority to deal with a stay application on the following factors:-

(I). Prima facie case;
(II). Irreparable injury; and
(III). Balance of convenience.

5. It is necessary for any Tribunal or Appellate Authority, while dealing with a stay application to discuss these three factors while granting or refusing the stay to the whole extent or to a partial extent. We do not find any such discussion in the order passed by the learned Tribunal.

6. The learned counsel for the Assessee urged before us even on merits of the case, to some extent, to say that the Transfer Pricing Officer had erroneously made Entry-wise adjustments rather then Transaction-wise adjustments in the present case and the business of the Assessee for construction of metro line in Chennai was also temporarily discontinued.

7. The learned Tribunal has however observed in paragraph 3 of the order that the Assessee had not established its financial hardship for payment of the outstanding demand by the Revenue.

8. Be that as it may, we are not inclined to go into the details into the facts of the case or deal with the merits of the Appeal pending before the Tribunal.

9. Therefore, we dispose of the present Appeal with a request to the learned Income Tax Appellate Tribunal to dispose of the pending Appeal of the Assessee as expeditiously as possible, preferably within a period of three months from today. For the grant of interim relief, we may observe that the Revenue Department, may not take coercive action against the Assessee for recovery of the outstanding demand of Rs.11,29,18,300/- during the said period of three months, subject to the condition that the Appellant/Assessee Company before us M/s. Mosmetro India Pvt., Ltd., deposits a sum of Rs.2 (Rupees Two Crores only) with the Income Tax Department within a period of four weeks from today. There shall not be any reduction of the said amount of deposit of Rs. 2 (Rupees Two Crores only) nor any extension of time period of four weeks from today by this Court, as we have already taken a sympathetic view of the matter.

10. With the above directions, this Appeal is disposed of. No costs. Consequently, connected Civil Miscellaneous Petitions are also closed.

Sd/-
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

vsg

To

1. The Assistant Commissioner of Income Tax,
Corporate Circle - 4(1)
Room No.430 IV Floor Main Building,
121, MG Road, Nungambakkam,
Chennai - 34, Tamil Nadu.

2.The ministry of Finance Income Tax Department,
Dispute Resolution Panel 2 Bangalore,
A Wing IV Floor, Kanchiya Sadan
Kuramangala , Bangalore 560 034.

3.The Deputy Commissioner of Income Tax,
Room No. 430 Ayyankar Bhavan IV Floor,
121, MG Road, Nungambakkam,
Chennai

4.The Deputy Commissioner of Income Tax,
Room No.508, V Floor,
BSNL Build Tower
16 Greams Road, Chennai.

5.The Income Tax Appellate Tribunal D Bench, Chennai.

+1cc to Mr. K.Senguttuvan, Advocate SR.No. 16314
+1cc to M/s. Karthik Renganathan , Advocate SR.No. 16011

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And
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A.SK(07/05/2019)