IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.01.2019

CORAM:

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
AND
THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

Writ Appeal No.220 of 2019
and C.M.P.Nos.2347 and 2351 of 2019

Fairmacs Shipping and Transport Services
Private Limited,
Represented by its Director,Sunil Shete,
New No.31, B.A.Estates, Moore Street,
Parrys, Chennai - 600 001. ... Appellant/Petitioner

-vs-

1.The Deputy Commissioner of Income-Tax
Corporate Circle - 2(1)
Room No.511, Wanaparthy Block,
121, M G Road, Nungambakkam,
Chennai - 600 034.

2.The Assistant Commissioner of Income Tax
Corporate Circle - 2(1),
Wanaparthy Block,
121, M G Road, Nungambakkam,
Chennai - 600 034. ... Respondents/Respondents

Prayer: Writ Appeal filed under Clause 15 of Letter Patent against the order dated 08.01.2019 passed in W.M.P.No.359 of 2019 and W.P.No.356 of 2019.

Prayer in W.P.No.356 of 2019:

Writ Petition filed under Article 226 of Constitution of India prayihg to issue a Writ of Certiorari to call for the records in PAN AAACFO474A/13-14 dated 20-12-2018 for the Assessment year 2013-14 on the file of the 1st respondent.

For Appellant : Mr.Sandeep Bagmar

For Respondents: Mr.Naveen Durai Babu
Junior Standing Counsel

J U D G M E N T

[Delivered by T.S.SIVAGNANAM,J.]

Heard Mr.Sandeep Bagmar, learned counsel for the appellant and Mr.D.Naveen Durai Babu, learned Junior Standing Counsel for the respondents/Revenue.

2. This appeal has been filed by the writ petitioner challenging the interim order passed in the writ petition dated 08.01.2019. The learned Writ Court by the impugned order granted an order of stay of the assessment order dated 20.12.2018 subject to the condition that the appellant pays 20% of the tax demand within a period of four weeks from the date of receipt of a copy of the order.

3. It is the submission of the learned counsel for the appellant that directing the appellant to pay 20% of the tax demand is without any merit because the assessment order was passed without opportunity of personal hearing and without issuing any notice. Further, it is submitted that the learned Writ Court having found that the appellant has made out a prima facie case ought to have granted a full stay of the assessment order.

4. In our considered view, the learned Writ Court after going through the facts of the case and hearing the submissions of the learned counsel for the appellant recorded a finding that the Court is of the prima facie view that there appears to be a deviation taken by the Assessing Officer from the reasons stated in the original communication dated 20.04.2018, while rejecting the objections raised by the appellant in the impugned order dated 17.12.2018. The Court further recorded that it is of the view that at this stage it is not required to direct the appellant to file a regular appeal against the assessment Order, since the Court is inclined to hear and decide the challenge made against the re-opening itself. Further, it was pointed out that considering the facts and circumstances of the case and since an order of assessment has already been passed, the learned Writ Court was of the view that some protection can be given, provided, the appellant should also safeguard the interest of the Revenue without prejudice to the contentions of respective parties. Accordingly, the Court granted an order of interim stay subject to payment of 20% of the tax demanded. In our considered view, the discretion exercised by the Court cannot be questioned or cannot be stated to be either perverse or unsustainable. In such circumstances, we are not inclined to interfere with the order passed by the learned Writ Court.

5. Accordingly, the writ appeal fails and the same stands dismissed. Time for compliance of the condition imposed by the Writ Court is extended by a period of four weeks from today. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

svki

To

1.The Deputy Commissioner of Income-Tax
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+1cc to M/S.Hema Murali Krishnan, Advocate Sr.8755
+1cc to M/S.Sandeep Bagmar, Advocate sr.7839

W.A.No.220 of 2019

ssv[co]
srg 21/02/2019