IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 27-08-2019

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THE HONOURABLE MR. JUSTICE M.SUNDAR

W.P.No.6845 of 2019
And
W.M.P.No.7788 of 2019

M/s.Intimate Fashions (India) Private Limited,
Represented by its Authorised Signatory-
Mr.David Ponraj, No.517-519, Tirupporur-
Kottamedu High Road, Nandhivaram,
Guduvancheri-603 202. .. Petitioner

vs.

Joint Commissioner of Income Tax (OSD),
Company Circle 2(2),
121 Mahatma Gandhi Road,
Nungambakkam,
Chennai-600 034. .. Respondent

PRAYER : Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Prohibition, restraining the respondent from proceeding with the recovery of demand pursuant to the order under Section 143(3) read with Section 144C(13) of the Act in PAN AAAC12706C dated 3rd August 2018 till the disposal of the petitioner's appeal in ITA No.ITTPA 54/CHNY/2018 before the D Bench of the ITAT, Chennai.

For Petitioner :Mr.N.V.Balaji

For Respondent :Ms.Hema Muralikrishnan,
Senior Standing Counsel (Income Tax).

O R D E R

Mr.N.V.Balaji, learned counsel on record for writ petitioner and Ms.Hema Muralikrishnan, learned Senior Standing Counsel (Income Tax) on behalf of sole respondent are before this Court.

2. With consent of learned counsel on both sides, the main writ petition is taken up.

3. Nucleus of this writ petition is an assessment order and demand dated 03.08.2018 bearing 'Reference PAN AAAC12706C' (hereinafter 'said order' for brevity). There is no disputation that said order has been made under Section 143(3) of the 'Income Tax Act 1961' ('IT' Act for brevity) read with Section 144C(13) of the IT Act.

4. When the matter came up before my learned Hon'ble Predecessor Judge, Hon'ble Predecessor Judge passed an interim order dated 11.03.2019 in WMP No.7788 of 2019 in WP No.6845 of 2019 and the operative portion as contained in paragraph-7, reads as under:

> '7. Applying the rationale of the same, I am of the view that a prima facie case arises in the present case for grant of interim orders. The petitioner also states that the appeal is itself for final hearing before the Tribunal on 20.03.2019. In these circumstances, there shall be an interim stay of recovery, as prayed for, upon condition that the petitioner remits 20% of Rs.61,11,213/- being the disputed demand arising from dis-allowance under Section 80JJAA of the Act and provide proof of remittance of the same on 20.03.2019 before the Tribunal before proceeding with the appeal. Both the petitioner and revenue are directed to co-operate in the expeditious disposal of the appeal.'

5. Today, it is submitted, without any disputation or disagreement by both sides, that the condition set out in paragraph-7 of the aforesaid order dated 11.03.2019 has since been complied.

6. What is of significance is the writ petitioner has assailed said order by way of a regular statutory appeal under Section 254 of the IT Act before 'Income Tax Appellate Tribunal' ('ITAT' for brevity) vide I.T (TP) No.54/CHNY/2018. To be noted, in the instant cases reference 'ITAT' is a reference to ITAT 'D' Bench, Chennai.

7. In the aforesaid statutory appeal before ITAT, writ petitioner had taken out a stay petition in S.P.No.65/CHNY/2019. Post 11.03.2019 interim order of this Court referred to supra, ITAT passed an order dated 29.03.2019 in the aforesaid stay

petition.

8. After extracting the aforesaid interim order of this Court made by my Hon'ble Predecessor Judge and noticing that the condition thereat has since been complied, ITAT vide 29.03.2019 order granted stay which reads as under:

> 'We find that assessee has already complied with the direction of the Jurisdictional High Court and remitted 20% of the disallowance made under Section 80JJAA of the Act. Further assessee's appeal for preceding assessment year which are on substantially similar grounds has been heard by this Tribunal and orders has been reserved. In the circumstances, we are of the opinion that it is a fit case for grant of stay. We stay the balance demand for a period of six months or till the disposal of the appeal whichever is earlier.
>
> 5. In the result, the stay petition of the assessee stands allowed.
>
> (Underlining made by this Court to supply emphasis and highlight)'

9. Apprehension of learned counsel for writ petitioner is, on expiry of six months, which is in the anvil, stay will cease to operate. There is a direction vide earlier order that the writ petitioner and the Revenue shall co-operate in expeditious disposal of appeal and there is no dispute or disagreement before this Court that there has not been any difficulty on this front before ITAT thus far.

10. This Court is assured by learned counsel for writ petitioner that this position will continue and the writ petitioner also is keen to have the aforesaid regular statutory appeal before ITAT to be carried towards logical end at the earliest.

11. In other words, both sides are hopeful of an early disposal of the main appeal itself now pending before ITAT. Therefore, this Court deems it appropriate to dispose of the main writ petition by holding that the interim order already granted by this Court, which has been followed by ITAT, after noticing compliance vide aforesaid 29.03.2019 order in S.P.No.65/CHNY/2019 shall continue to operate till expiry of six months from the date of order (29.03.2019) or disposal of the appeal whichever is later.

12. As this douses all issues in the instant writ petition, writ petition itself is disposed of on the above lines. However, there shall be no order as to costs.

Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

Svn

To

Joint Commissioner of Income Tax (OSD),
Company Circle 2(2),
121 Mahatma Gandhi Road,
Nungambakkam,
Chennai-600 034.

+1cc to Mr.N.V.Balaji, Advocate, SR.74917
+1cc to Mr.Hemamurali Krishnan, Advocate,73853

W.P.No.6845 of 2019

NR(CO)
CB(09/10/2019)