IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.04.2019

CORAM

THE HONOURABLE Dr. JUSTICE ANITA SUMANTH

WP. No.9374 of 2019
and
WMP. No.9945 of 2019

M/s.Swiss Park Vanijya Private Limited
Represented by its Director
Mr.Sudhir Singhi ... Petitioner

vs.

1.The Principal Commissioner of Income Tax,
Central -1, 3rd Floor, No.46,
Mahatma Gandhi Road,
Nungambakkam, Chennai - 600 034.

2.The Assistant Commissioner of Income Tax,
Central Circle -1 (1),
3rd Floor, No.46, Mahatma Gandhi Road,
Nungambakkam, Chennai - 600 034.

3.The Commissioner of Income Tax (Appeals) -18,
3rd Floor, No.46, Mahatma Gandhi Road,
Nungambakkam, Chennai 600 034. .. Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamaus calling for the records on the files of the 1st respondent in PAN:AAGPM3050W and quash the impugned order in C.No.1571/PCIT/C-1/18/2018-19 dated 14.03.2019 passed by the 1st respondent rejecting the stay petition filed by the petitioner for stay of demand for the Assessment Year 2011-12 as illegal, arbitrary and devoid of merit and consequentially direct the 1st respondent to grant stay for the proceedings in C.No.1571/PCIT/C-1/18/2018-19 dated 14.03.2019 till the disposal of the appeal before the 3rd respondent.

For Petitioner : Mr.R.Sivaraman

For Respondents : Mr.A.N.R.Jayapratap
Standing Counsel

O R D E R

Heard Mr.R.Sivaraman, learned counsel for the petitioner and Mr.A.N.R.Jayapratap, learned standing counsel for the respondents.

2.The petitioner assails an order passed by the Principal Commissioner of Income Tax/first respondent dated 14.03.2019, considering the application filed by the petitioner seeking stay of demand arising from an order of assessment passed under the provisions of Income Tax Act, 1961 (in short 'Act') for Assessment Year 2011-12.

3. The order is assailed on the grounds that:

(i) the assessment is a protective assessment and as such no recovery of demand can be made in respect of protective assessment;

(ii) Though the stay petition filed by the petitioner is detailed and establishes a prima facie case, the same has not been taken into effect by the Assessing Officer;

(iii) The order is non speaking and cryptic and calls upon the petitioner to pay 13.25% of the disputed demand (being 20% of the disputed demand payable as reduced by 6.75% of payment made by the substantive assessee), immediately;

(iv) That the substantive assessee, one Shri.Arvind Kumar (HUF) has declared an amount of Rs.82,30,04,555/- in respect of Assessment Years 2010-11 to 2014-15 under the Income Declaration Scheme, 2016 and the present assessment includes a sum of Rs.24 Crores, out of which, a sum of Rs.16 Crores form part of the declarations made by him. Thus there is double addition with respect to the sum of Rs.16 Crores and what remains for assessment would, if at all, only be a sum of Rs.8 Crores that is, in any event, disputed in appeal.

(v) After the filing of the Writ Petition, coercive recovery measures by attachment of bank accounts of the petitioner in five (banks) have been taken on 26.03.2019.

4. The Department counsel was directed to take instructions upon the grounds raised, specifically point 3 (iv) above. Learned standing counsel for the respondents circulates the following revised demand raised by the Assistant Commissioner of Income Tax, arrayed as 2nd respondent.

' The details required in connection with the hearing of writ petition in the above said case on 01.04.2019, are furnished herewith as under:

(i) it is informed that Shri Arvind Kumar (HUF) paid taxes of Rs.37,03,52,051/- on the undisclosed income declared of Rs.82,30,04,555/- for the Assessment Years 2010-11, 2011-12, 2013-14 and 2014-15 which includes an amount of Rs.16,01,60,000/- pertaining to the assessment year 2011-12 which in turn includes the amount of Rs.16,00,00,000/- declared as additional income for the AY 2011-12 towards investment made in the shares M/s. Swiss Park Vanijya Private Limited (Please refer to Annexure-4 to Form No:1 filed by Shri Arvind Kumar (HUF) under Income Declaration Scheme, 2016. Copies of Form 1 along with Annexures to Form 1 (Annexures 1, 2, 3A, 3B, 4 and 5) are enclosed herewith for ready reference. Copies of Form No.2 dated 13.10.2016 and Form No.4 dated 02.06.2017 issued in this regard by the PCIT-1, Chennai are also enclosed herewith.

(ii) Details of tax calculation fro the AY 2011-12 in the case of M/s Swiss Park Vanijya Private Limited are as under:

(a) Demand raised as per the assessment order dated 30.12.2018 on the addition made of Rs.24,00,00,000/-: Rs.15,38,30,670

(b) Proportionate demand in respect of the addition amount of Rs.8,00,00,000/- works out to Rs.5,12,76,890/-

(c) 13.25% of Rs.5,12,76,790 works out to Rs.67,94,188/-.'

5. The Assessing Officer has very fairly excluded the amount of Rs.16 Crores declared by Sri.Arvind Kumar (HUF) in the computation of tax and has arrived at a proportionate demand of 13.25%, after taking into account 6.75% of the disputed tax paid by the substantive assessee, revising the total demand to Rs.67,94,188/-. The tax component is Rs.35,11,513/-, which, the petitioner, upon instructions, agrees to remit within a period of two weeks from today.

6. This Writ Petition is disposed of directing the petitioner to remit a sum of Rs.35,11,513/- within a period of two (2) weeks from today upon compliance of which there shall be a stay of further recovery till disposal of appeal by the Commissioner of Income Tax (Appeals). Connected miscellaneous petition is closed. No costs.

Sd/-
Assistant Registrar(J)

//True Copy//

Sub Assistant Registrar

To

1.The Principal Commissioner of Income Tax,
Central -1, 3rd Floor, No.46,
Mahatma Gandhi Road,
Nungambakkam, Chennai – 600 034.

2.The Assistant Commissioenr of Income Tax,
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3.The Commissioenr of Income Tax (Appeals) -18,
3rd Floor, No.46, Mahatma Gandhi Road,
Nungambakkam, Chennai 600 034.

+1cc to Mr.A.P.Srinivas, Advocate Sr.31269
+1cc to Mr.R.Sivaraman, Advocate Sr.32200

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mr[co]
srg 10/5/2019