IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :04.07.2019

CORAM

THE HON'BLE MR.JUSTICE M.SUNDAR

W.P.NO.12673 OF 2019
AND
W.M.P.NOS.12898 & 12904 OF 2019

Solar Equipments Technologies Pvt Ltd
3rd Floor, Block A, Bannari Amman Towers
No.29, Dr.Radhakrishnan Road
Mylapore, Chennai – 600 004
Represented by its authorized signatory
Mr.T.Seshadri ..Petitioner

vs

1. Principal Commissioner of Income Tax
   Corporate Ward-6
   Chennai – 34.

2. Income Tax Officer,
   Corporate Ward 6(3)
   Aayakar Bhawan, 121
   M.G. Road, Nungambakkam
   Chennai – 600 034. ..Respondents

Prayer:

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records of the 1st Respondent contained in its order bearing reference No.PCIT-6/ITO(HQ)/STAY/6102/2018-19/dated 21.3.2019 with respect to PAN:AASCS5557P in respect of AY 2016-17 and quash the same as arbitrary, illegal and unjust and to consequently direct the Respondents or any of their subordinates, agents, representatives or any other person claiming under/through the Respondents to refrain from in any manner seeking to enforce and/or initiate recovery proceedings pursuant to the 2nd Respondent's Notice of Demand bearing No.ITBA/AST/S/156/2018-19/1014473269(1) dated 21.12.2018 for PAN:AASCS5557P in respect of AY 2016-17 and pass such further or other orders as this Hon'ble Court may deem fit in the facts and circumstances of the case.

For Petitioner : Mr.Suhrith Parthasarathy

For Respondents : Mr.A.N.R.Jayaprathap
Junior Standing counsel
(Income Tax)

O R D E R

Mr.Suhrith Parthasarathy, learned counsel on record for writ petitioner is before this Court and Mr.A.N.R.Jayaprathap, learned Junior standing counsel(Income Tax) accepts notice on behalf of both respondents.

2. With consent of learned counsel on both sides, main writ petition is taken up, heard out and is being disposed of.

3. Short facts imperative for appreciating this order are as follows:

a) Writ petitioner is an Assessee under the 'Income Tax Act, 1961'['IT Act' for the sake of brevity].

b) Writ petitioner was subjected to scrutiny assessment under Section 14(3) of IT Act.

c) Aggrieved, writ petitioner filed a statutory appeal to the Commissioner(Appeals) under Section 246A of IT Act on 19.01.2019.

d) Pending appeal, writ petitioner moved the original authority i.e., Assessing Officer by way of a stay petition and this is on 23.01.2019.

e) To be noted, the original authority is Respondent No.2 in the instant writ petition.

f) Respondent No.2 did not pass any orders. Therefore, the assessee approached a higher officer in the hierarchy namely the jurisdictional Principal Commissioner of Income Tax, who is Respondent No.1 in instant writ petition, on 22.02.2019, with a prayer for stay, pointing out that the request for stay made before 2nd respondent is pending and no orders have been passed.

g) Post 22.02.2019, when the request of the writ petitioner for stay was pending before the 1st respondent, the 2nd respondent passed an order on 26.02.2019, inter-alia directing the writ petitioner to pay 20% of the sum in question.

h) As the writ petitioner was not satisfied, writ petitioner persisted and pursued the stay petition before the 1st respondent, which was filed on 22.02.2019. This culminated in order dated 21.03.2019 made by the 1st respondent bearing reference No.PCIT-6/ITO(HQ)/STAY/6102/2018-19, which has been called in question in the instant writ petition and the same shall hereinafter be referred as 'impugned order' for the sake of convenience and clarity.

4. Learned counsel for writ petitioner submitted that the impugned order is cryptic and the parameters / determinants, which have to be considered for disposing of a stay petition of this nature have not been considered.

5. Suffice to say that a reading of the impugned orders brings to light that there is no articulation or expression by the 1st respondent in the impugned order that these parameters / determinants were applied.

6. Learned Revenue counsel submitted that it was explained to the assessee that part payment is necessary, assessee sought two days time to revert and report, if payment is possible but did not do so and therefore, the impugned order came to be passed. This no doubt is articulated in the impugned order, but in the considered opinion of this Court, this does not satisfy the requirement of adherence to parameters / determinants for disposing of a stay petition.

7. There is no disputation or disagreement before this Court that a Hon'ble Single Judge of this Court vide W.P.No.3849 of 2019(order dated 13.02.2019), laid down the manner in which stay petitions of this nature have to be disposed of. Most relevant paragraphs are paragraphs 12 and 14, which read as follows:

> '12. The Circulars and Instructions as extracted above are in the nature of guidelines issued to assist the assessing authorities in the matter of grant of stay and cannot substitute or override the basic tenets to be followed in the consideration and disposal of stay petitions. The existence of a prima facie case for which some illustrations have been provided in the Circulars themselves, the financial stringency faced by an assessee and the balance of convenience in the matter constitute the 'trinity', so to say, and are indispensable in consideration of a stay petition by the authority. The Board has, while stating generally that the assessee shall be called upon to remit 20% of the disputed demand, granted ample discretion to the authority to either increase or decrease the quantum demanded based on the three vital factors to be taken into consideration.
>
> 14. The disposal of the request for stay by the petitioner leaves much to be desired. I am of the categoric view that the Assessing Officer ought to have taken note of the conditions precedent for the grant of stay as well as the Circulars issued by the CBDT and

passed a speaking order. Of course the petition seeking stay filed by the petitioner is itself cryptic. However, as noted by the Supreme Court in the case of Commissioner of Income tax vs Mahindra Mills, ((2008) 296 ITR 85 (Mad)) in the context of grant of depreciation, the Circular of the Central Board of Revenue (No. 14 (SL- 35) of 1955 dated April 11, 1955) requires the officers of the department 'to assist a taxpayer in every reasonable way, particularly in the matter of claiming and securing reliefs. .... Although, therefore, the responsibility for claiming refunds and reliefs rests with the assessees on whom it is imposed by law, officers should draw their attention to any refunds or reliefs to which they appear to be clearly entitled but which they have omitted to claim for some reason or other......'. Thus, notwithstanding that the assessee may not have specifically invoked the three parameters for the grant of stay, it is incumbent upon the assessing officer to examine the existence of a prima facie case as well as call upon the assessee to demonstrate financial stringency, if any and arrive at the balance of convenience in the matter.'

8. There is no disputation or disagreement before this Court that this matter is similar to an earlier case namely W.P.No.13984 of 2019 dated 03.06.2019, following the aforesaid order.

9. It is very fairly submitted by learned Revenue counsel that there is no intra court appeal against the aforesaid order dated 13.02.2019 made by another Hon'ble Judge in W.P.No.3849 of 2019 as well as order dated 03.06.2019 made by me in W.P.No.13984 of 2019.

10. Therefore, it follows as a natural and inevitable sequitur that the impugned order, which is cryptic and which does not make any reference to the parameters / determinants adumbrated in the aforesaid orders deserves to be set aside.

11. The impugned order being order dated 21.03.2019 is set aside and the matter is sent back to the 1st respondent namely, Principal Commissioner of Income Tax for disposal of the stay petition with regard to the Assessment Year 2016-2017 afresh, after affording an opportunity to the writ petitioner and by adhering to aforesaid parameters / determinants adumbrated in the aforesaid orders, more particularly paragraphs 12 and 14 of order dated 13.02.2019 in W.P.No.3849 of 2019, which has been extracted and reproduced supra.

12. Learned counsel for writ petitioner submits on instructions that the main appeal before the Commissioner

(Appeals) is still pending and this statement is recorded.

13. The 1st respondent shall dispose of the stay petition in the aforesaid manner as expeditiously as possible and in any event within four(4) weeks from the date of receipt of a copy of this order.

14. This writ petition is disposed of on above terms. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

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To

1. Principal Commissioner of Income Tax
   Corporate Ward-6, Chennai – 34.

2. Income Tax Officer,
   Corporate Ward 6(3)
   Aayakar Bhawan, 121
   M.G. Road, Nungambakkam
   Chennai – 600 034.

+1cc to Mr.Arun Karthik Mohan, Advocate, S.R.No.56414
+1cc to Mr.A.P.Srinivas, Advocate, S.R.No.56406

W.P.No.12673 of 2019
and
W.M.P.Nos.12898 & 12904 of 2019

KK(CO)
CS/06/08/2019