

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.7.2019

CORAM :

The Honourable Mr.Justice T.S.SIVAGNANAM

and

The Honourable Mrs.Justice V.BHAVANI SUBBAROYAN

Tax Case Appeal Nos.494 & 498 to 500 of 2019 &
CMP.Nos.15353, 15366, 15368, 15379 & 15382 to 15384 of 2019

M/s.Royal Sundaram General
Insurance Co. Ltd.,
Chennai-2 ...Appellant/ Petitioner

Vs

The Deputy Commissioner of
Income Tax, Large Tax Payer
Unit-1, Chennai-34. ...Respondent/ Respondent

APPEALS under Section 260A of the Income Tax Act, 1961 to set aside the common order dated 08.2.2019 made respectively in MA.Nos.61, 62, 63 and 58/Chny/2018 on the file of the Income Tax Appellate Tribunal, Chennai 'D' Bench for the assessment years 2012-13, 2013-14, 2014-15 and 2010-11 respectively.

Against the order dated 12.01.2018 these stay Petitions are filed by the Appellant made in ITA.NOs.86 TO 89&90 TO 93/mds/2018 for the AYS 2008-09 TO 2011-2012&2011-2012 TO 2014-15 on the file of the Deputy Commissioner of Income Tax, Large Tax Payer Unit I, in PAN.AABCR 7106 G.

For Appellant : Mr.Subbraya Aiyar Padmanabhan
for Mr.Vijayaraghavan
For Respondent : Mr.M.Swaminathan, SSC and
Mrs.V.Pushpa, SC

COMMON JUDGMENT

(Judgment was delivered by T.S.Sivagnanam,J)

These appeals, filed by the assessee under Section 260A of the Income Tax Act, 1961 (for short, the Act), are directed against the common order dated 08.2.2019 made

respectively in MA.Nos.61, 62, 63 and 58/ Chny/2018 on the file of the Income Tax Appellate Tribunal, Chennai 'D' Bench for the assessment years 2012-13, 2013-14, 2014-15 and 2010-11 respectively. The said miscellaneous applications were filed by the assessee to modify the stay order passed by the Tribunal in S.P.Nos.1 to 8/Mds/2018 dated 12.1.2018.

2. The assessee challenged the assessments for the years 2008-09 to 2014-15 after having been unsuccessful before the Commissioner of Income Tax (Appeals). Before the Tribunal, along with the appeals, the assessee filed petitions praying for stay of the demand for all the assessment years.

3. To substantiate a prima facie case before the Tribunal, the assessee contended that substantial portion of the disallowance was on the payments made to motor vehicle dealers, that the demand itself is nearly to an extent of Rs.200 Crores for all the seven assessment years and that the assessee has got an excellent case on merits in the main appeals. The assessee relied upon certain decisions of this Court rendered in respect of other insurance companies carrying on identical business, which, according to the assessee, had attained finality, as the Revenue did not file any appeals before the Hon'ble Supreme Court. Thus, it was contended that the balance of convenience was in favour of the assessee and if an order of stay of the demand was not granted, the assessee would be put to irreparable hardship.

4. The Tribunal, after hearing the assessee, granted a conditional order of stay on 12.1.2018 directing the assessee to pay a sum of Rs.7 Crores per month and first of such instalment was directed to be made on or before 16.1.2018. The assessee, after complying with the condition by paying three instalments as directed by the Tribunal, filed a petition under Section 254(2) of the Act contending that they were facing hardship in running the business and that the condition for payment of Rs.7 Crores was onerous and prayed that the condition may be modified and that the outstanding demand be stayed till the disposal of the appeals with a further prayer to hear the appeals at the earliest.

5. The petitions filed under Section 254(2) of the Act were pending before the Tribunal since April 2018. In the meanwhile, the assessee filed fresh stay petitions before the Tribunal and they were dismissed by the Tribunal by a common order dated 26.10.2018. Challenging the common order dated 26.10.2018, the assessee filed writ petitions in W.P.No.29564 of 2018 etc. cases. Those writ petitions were heard by a Division Bench of this Court, to which, one of us (TSSJ) was a party and by a common order dated

12.11.2018, the said writ petitions were dismissed on the ground that the assessee had abruptly stopped complying with the conditional stay order passed by the Tribunal dated 12.1.2018 and that their conduct in filing fresh stay petitions was not appreciated.

6. During the course of hearing of the said writ petitions, it was brought to the notice of this Court that the assessee filed petitions for modification of the order dated 12.1.2018 and that the same were pending before the Tribunal. While refraining from making any observations, this Court left it open to the assessee to pursue their claim before the Tribunal. Thus, it appears that the assessee went before the Tribunal and sought for orders in the petitions filed under Section 254(2) of the Act, which were pending since April 2018. However, the Tribunal, by the impugned common order dated 08.2.2019, dismissed the petitions on the ground that there was no error pointed out in the order of the Tribunal dated 12.1.2018 and that the stay order not being passed under Section 254(1) of the Act, the petitions for modification/rectification under Section 254(2) of the Act would not lie.

7. The assessee has filed these appeals raising the following substantial questions of law :

"i. Whether the Tribunal was right in law in holding that stay order is not an order passed under Section 254 (1) of the Income Tax Act, 1961 and the miscellaneous application under Section 254(2) does not lie in respect of an order in respect of stay petition ?

ii. Whether the Tribunal ought to have appreciated that the order of stay passed by it is an order of the Tribunal and therefore, ought to have held that the Tribunal had the inherent power to rectify/alter/modify its own order and consequently entertained the miscellaneous application and pass a suitable order of stay of collection of tax ? And

iii. On the facts and circumstances of the case and the decision of the Coordinate Bench/High Court in respect of the issues and the quantum of payment made by the assessee, whether the Tribunal ought to have held that balance of convenience is in favour of the appellant and therefore, should have granted stay of collection of tax

till the disposal of the appeal? "

8. We have elaborately heard Mr.Vijayaraghavan, learned counsel appearing for the appellant and Mr.M.Swaminathan, learned Senior Standing Counsel and Mrs.V.Pushpa, learned Standing Counsel accepting notice for the respondent and carefully perused the materials on record.

9. The issue to be considered is as to whether the Tribunal was right in rejecting the applications filed by the assessee under Section 254(2) of the Act as not maintainable.

10. We need not labour much to take a decision on the said issue, as we are guided by the decision in the case of ITO Vs. M.K.Mohammed Kunhi [reported in (1969) 71 ITR 0815], in which, the Hon'ble Supreme Court dealt with the powers of the Tribunal under Sections 254 and 255 of the Act and held as follows :

"It may also be that as a matter of practice prevailing in the department the Commissioner or the Inspecting Assistant Commissioner in exercise of administrative powers can give the necessary relief of staying recovery to the assessee but that can hardly be put at par with a statutory power as is contained in Section 220(6) which is confined only to the stage of pendency of an appeal before the Appellate Assistant Commissioner. The argument advanced on behalf of the appellant before us that in the absence of any express provisions in Sections 254 and 255 of the Act relating to stay of recovery during the pendency of an appeal it must be held that no such power can be exercised by the Tribunal, suffers from a fundamental infirmity inasmuch as it assumes and proceeds on the premise that the statute confers such a power on the Income-tax Officer who can give the necessary relief to an assessee. The right of appeal is a substantive right and the questions of fact and law are at large and are open to review by the Appellate Tribunal. Indeed the Tribunal has been given very wide powers under Section 254(1) for it may pass such orders as it thinks fit after giving full hearing to both the parties to the appeal. If the Income-tax Officer and the Appellate Assistant

Commissioner have made assessments or imposed penalties raising very large demands and if the Appellate Tribunal is entirely helpless in the matter of stay or recovery the entire purpose of the appeal can be defeated if ultimately the orders of the departmental authorities are set aside. It is difficult to conceive that the Legislature should have left the entire matter to the administrative authorities to make such orders as they choose to pass in exercise of unfettered discretion. The assessee, as has been pointed out before, has no right to even move an application when an appeal is pending before the Appellate Tribunal under Section 220(6) and it is only at the earlier stage of appeal before the Appellate Assistant Commissioner that the statute provides for such a matter being dealt with by the Income-tax Officer. It is a firmly established rule that an express grant of statutory power carries with it by necessary implication the authority to use all reasonable means to make such grant effective (Sutherland Statutory Construction, Third Edition, Arts. 5401 and 5402). The powers which have been conferred by Section 254 on the Appellate Tribunal with widest possible amplitude must carry with them by necessary implication all powers and duties incidental and necessary to make the exercise of those powers, fully effective." सत्यमेव जयते

11. As held in the said decision, the powers, which have been conferred on the Tribunal under Section 254 of the Act should be interpreted in the widest possible amplitude and it has to be held that by necessary implication, all powers and duties incidental and necessary to make the exercise of those powers fully effective, are conferred on the Tribunal. Therefore, we do not agree with the finding of the Tribunal that it has no jurisdiction to consider the relief sought for by the assessee.

12. Under normal circumstances, we would have been well justified in interfering with the order impugned before us and remanding the matter to the Tribunal for a decision on merits. However, the subsequent events, which have take

place post April 2018 and after the common order dated 12.11.2018 in W.P.No.29564 of 2018 etc. cases, preclude us from doing so and we propose to dispose of the appeals.

13. It is brought to our notice by the learned counsel for the appellant that after the said writ petitions were dismissed by a common order dated 12.11.2018, the assessee complied with the direction issued by the Tribunal in its order dated 12.1.2018, though not within the time stipulated therein. As of now, the entire demand of tax namely Rs.22,305.89 lakhs for all the seven assessment years has been paid.

14. The learned Senior Standing Counsel for the Revenue points out that though the assessee claims to have paid the entire demand of tax, the interest amount still remains unpaid.

15. It is true that the demand for interest and the demand for payment of penalty cannot be placed on the same pedestal, as, in several Statutes, payment of interest would be automatic. However, considering the fact that the entire demand of tax has been paid by the assessee post November 2018, we are of the considered view that the balance of demand should remain stayed till the appeals are heard and disposed of by the Tribunal.

16. In order to establish a good case on merits in the main appeals, the learned counsel appearing for the assessee has referred to a communication sent by the Chairman of the Insurance Regulatory and Development Authority of India to the Chairperson, Central Board of Excise and Customs dated 12.8.2015. He has submitted that a Division Bench of this Court, in a case arising under similar circumstances in respect of another insurance company, had given relief to the assessee, that certain decisions fully support the case of the assessee and that the assessee has got a fair chance of success before the Tribunal in the main appeals.

17. Considering the fact that the demand of tax and interest is substantial and the fact that the assessee complied with the direction issued by the Tribunal, we are of the view that the balance amount as demanded for the seven assessment years shall remain stayed. For the above reasons, we are also of the view that the common order passed by the Tribunal calls for interference.

18. In the result, the above tax case appeals are allowed, the common order passed by the Tribunal is set aside and there will be an order of stay of the remaining amount as demanded from the assessee in respect of all the seven assessment years. The substantial questions of law are answered in favour of the assessee. No costs. Consequently, the connected CMPs are closed.

19. We are informed that the main appeals are listed

before the Tribunal during September 2019.

20. As observed by us earlier, since the demand is substantial and since the assessee has paid the entire tax and claims that there are two decisions in their favour and in view of the fact that the issue raised by the Assessing Officer being a recurrent issue, we request the Tribunal to consider and dispose of the main appeals at the earliest.

Sd/-

Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

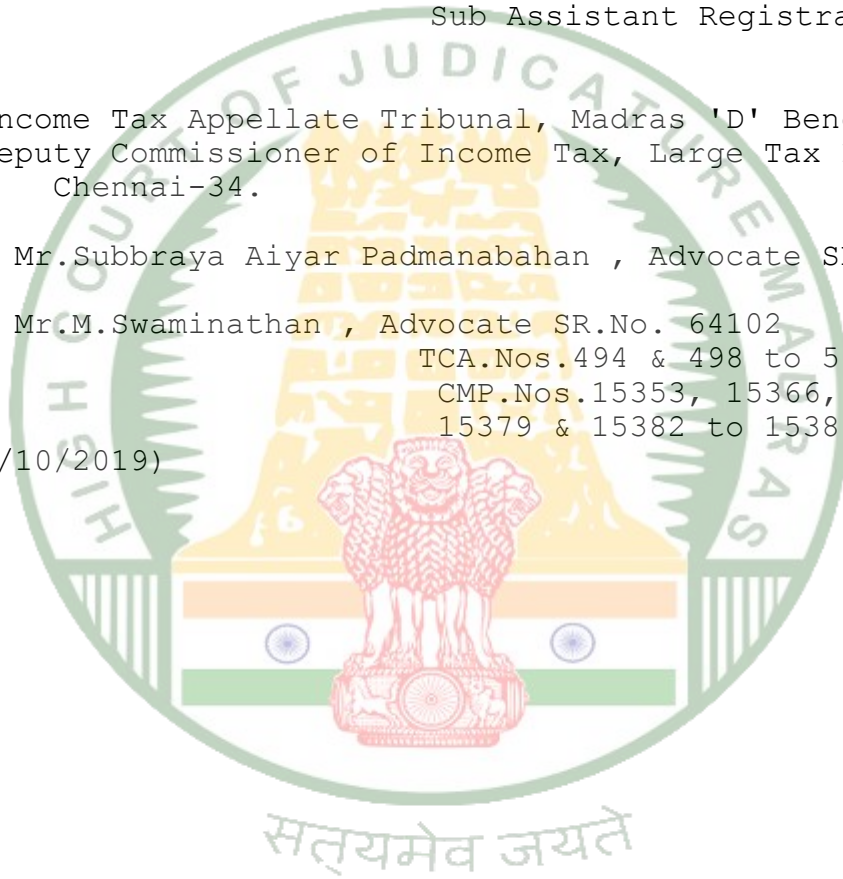
To

1.The Income Tax Appellate Tribunal, Madras 'D' Bench.
2.The Deputy Commissioner of Income Tax, Large Tax Payer
Unit-1, Chennai-34.

+lcc to Mr.Subbraya Aiyar Padmanabahan , Advocate SR.No.
64147

+lcc to Mr.M.Swaminathan , Advocate SR.No. 64102
TCA.Nos.494 & 498 to 500/2019 &
CMP.Nos.15353, 15366, 15368,
15379 & 15382 to 15384/2019

A.SK(22/10/2019)



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