IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.07.2019

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
and
THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

Tax Case Appeal No.440 of 2019
and
C.M.P.No.14374 of 2019

Smt.Neetaa Suneel Shah,
No.178, Old No.88, NSC Bose Road,
Sowcarpet, Chennai-600 079.
[PAN AAQPS 8486E]
.. Appellant/Petitioner

-vs-

The Income Tax Officer,
Non Corporate Ward 5(2),
II Floor, Room No.220,
No.16, BSNL Building, Tower I,
Greams Road, Chennai-600 006. .. Respondent/Respondent

Appeal under Section 260A of the Income-tax Act, 1961 against the order dated 17.05.2019 on the file of the Income Tax Appellate Tribunal 'C' Bench, Chennai, in S.P.No.158/CHNY/2019 in I.T.A.No.1524/CHNY/2019 for the assessment year 2012-13, dated 17/05/2019 against the order of the Commissioner of Income Tax(Appelas)-5, Chennai-34 dated 30/04/2019 made in ITA.No.128/CIT(A)-5/2017-18 against the order of the Income Tax Officer, Non-Cororate Ward 5(2), Chennai-6 datd 12.12.2017 made in AAQPS8486E, for the Assessment year 2012-13.

For Appellant : Mr.R.Sandeep Bagmar

For Respondent : Ms.R.Hemalatha,
Senior Standing Counsel

JUDGMENT

(Delivered by T.S.Sivagnanam, J.)

This appeal by the assessee, filed under Section 260A of the Income-tax Act, 1961 (hereinafter referred to as "the Act"), is directed against the order dated 17.05.2019, passed in a stay petition filed by the assessee in S.P.No.158/Chny/2019 in I.T.A.No.1524/Chny/2019 on the file of the Income Tax Appellate Tribunal 'C' Bench, Chennai (for brevity, "the Tribunal"), for the assessment year 2012-13.

2.The Tribunal by the impugned order while considering the prayer for stay of the demand of Rs.37,40,152/-, held that the assessee could not make out any case for undue financial hardship in paying the outstanding demand and it has not established any prima facie case on the merits of the addition and therefore, held that it is not a fit case for grant of absolute stay. However, the Tribunal granted the order of stay subject to the condition that the assessee pays a sum of Rs.10,00,000/- in monthly instalments and the first instalment was directed to be paid on 31.05.2019, and the subsequent instalments by 30th of each calender month.

3.The assessee has complied with the condition imposed by the Tribunal, insofar as the first instalment of Rs.10,00,000/- payable on or before 31.05.2019 is concerned.

4.The question would be as to whether the assessee is entitled for an order of stay in respect of the balance amount and whether the Tribunal committed an error in directing the assessee to pay the entire demand in instalments.

5.The assessee has raised the following substantial questions of law for consideration:-

> "i. Whether the Tribunal was correct in dismissing the request for full stay of demand without considering the complete facts and circumstances of the case of the Appellant?
>
> ii. Whether the Tribunal was correct in dismissing the request for full stay of demand when the Appellant has strong prima facie case on merits, the assessment order being without jurisdiction and in complete violation of principles of natural justice?
>
> iii. Whether in the interest of justice, equity and fairness, the Appellant should be granted stay of balance tax demand when it has made a prima facie case on merits, the balance of convenience is in favour of the Appellant and undue hardship will be caused to the Appellant if further tax demand is to be paid?"

6.We have heard Mr.R.Sandeep Bagmar, learned counsel for the appellant/assessee; and Ms.R.Hemalatha, learned Senior Standing Counsel for the respondent/Revenue.

7.The three cardinal principles, which the Court is required to consider while granting an interim order are whether the petitioner/litigant has made out a prima facie case; whether balance of convenience is in his favour; and if the prayer for stay is not granted to a litigant, he will be put to irreparable hardship.

8.So far as the prima facie case is concerned, the Tribunal holds that it does not find any prima facie case on the merits of the addition. However, it is not clear as to how the Tribunal came to such a conclusion, as we find that there are no reasons set out by the Tribunal as to how it came to the conclusion that the assessee has not made out a prima facie case for consideration.

9.We refrain from going into the merits of the matter, since the appeal is pending before the Tribunal. However, on a cursory perusal of the order passed by the Commissioner of Income Tax (Appeals)-5, Chennai (for brevity, "the CIT(A)"), we find that the CIT(A) while rejecting the appeal questioning the reopening of the assessment, in paragraph 6.2 of its order dated 30.04.2019, would state that the authorized representative of the appellant/assessee appeared and filed details as called for in response to the notice under Section 148 without making an objection and therefore, held that the action of the Assessing Officer in reopening the assessment is valid. There can be no estoppal on the part of the assessee in participating the proceedings before the Assessing Officer. In fact, in terms of the decision of the Hon'ble Supreme Court in GKN Driveshafts (India) Ltd v. ITO reported in (2003) 259 ITR 19, the assessee is required to response to the notice issued by the Assessing Officer furnishing reasons for reopening.

10.In the instant case, we find that on objections being filed by the assessee, the Assessing Officer disposed of the objections and passed an order on 10.11.2017. Therefore, we are of the prima facie view that the CIT(A) ought to have considered the validity of the reopening and not rejected the appeal on the ground that the authorized representative of the assessee participated in response to the notice issued under Section 148 of the Act. This, in our considered view, would be sufficient for the present to hold that the assessee has made out a prima facie case.

11.Coming to the next aspect as regards the balance of convenience is concerned, the assessee is an individual and the assessment was reopened based upon an investigation which had commenced in Kolkata pertaining to certain stock brokers and the allegation being, there are criss gross deals among five stock brokers and many of the brokers involve stocks of shell companies.

12.On a query raised from the Court, the learned counsel for the assessee would submit that no statement was recorded from the appellant/assessee by the investigating agency, nor the report of the investigating agency was furnished to the assessee, nor the Assessing Officer had any independent material for reopening the assessment.

13.Considering these facts, we are of the view that the balance of convenience would lean in favour of the assessee. Apart from that the learned counsel for the assessee relied upon a decision of the Kolkata Bench of the Tribunal in I.T.A.Nos.698 and 699/Kol/2010 in respect of one Ravindra Sanghai (HUF) and submitted that it also pertains to dealing of shares in the company M/s.Multiplus Resources. It is submitted that in the said case, the Tribunal ruled in favour of the assessee by order dated 22.05.2012. Thus, we find that the balance of convenience, at this stage, would lean in favour of the assessee.

14.So far as the hardship that may be caused to the assessee is concerned, though the assessee has not produced substantial documents before the Tribunal to explain her financial status, she has stated that she is an individual assessee and disputed the balance tax payable is Rs.37,40,152/- and the assessee has paid Rs.10,00,000/- in terms of the direction of the Tribunal, her annual income is about Rs.7,00,000/- only and she has no liquid funds to pay the instalments and the capital gains arose some seven years before and the assessee has no funds to pay the disputed tax.

15.The learned counsel for the assessee has produced a chart showing the computation of tax demand and for better appreciation, we quote the same hereunder:-

Computation of Tax Demand

Particulars	Amount Rs.
Tax Demanded as per AO Order	28,20,927
Interest On Tax	19,17,226
Total Tax and Interest	47,38,153
Tax already paid	62,966
20% paid on 10.01.2018	9,35,038
1^{st} Instalment paid on 29.05.2019	10,00,000
Total Tax Paid	19,98,004
% of Tax Paid	70.83
% of Tax and Interest Paid	42.17

The above computation is stated to be in terms of the computation formed and appended to the assessment order dated 12.12.2017.

16.From the above computation, it is seen that the total tax paid by the assessee is Rs.19,98,004/- out of the tax demand of Rs.28,20,927/- which comes to nearly 71% of the demand. If interest on the tax is added, then the amount which has been paid by the assessee would be little more than 42%. Thus, going by the payment effected by the assessee towards the tax component, we find that the interest of the Revenue is sufficiently safeguarded. That apart, the assessee had requested for an early hearing of the appeal raising various contentions including the contention that the Chennai Tribunal has remanded similar matters for further verification.

17.In the light of the above reasons, we are of the considered view that the payment effected by the assessee, thus for, that is prior to the passing of the interim order by the Tribunal and upon compliance of the payment of first instalment totalling a sum of Rs.19,98,004/- would sufficiently safeguard the interest of the Revenue.

18.Accordingly, the respondent need not insists upon any further payment till the disposal of the appeal and the balance tax and interest payable by the assessee shall remained stayed till the disposal of the appeal filed by the assessee before the Tribunal.

19.For the above reasons, the appeal is partly allowed and the order passed by the Tribunal is modified to the extent indicated above. Consequently, the substantial questions of law are left open. No costs. The connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

abr

To

1.The Income Tax Officer,
Non-Corprote Ward-5(2),
II Floor, Roon No.220,
NO.16, BSNL Building Tower-I,
Greams Road,
Chennai-600 006.

2.The Commissioner of Income Tax (Appeals)-5,
121, Mahatma Gandhi Road, Nungambakkam,
Chennai-600 034.

3.The Income Tax Appellate Tribunal 'C' Bench, Chennai.

+1cc to Mr.T.Ravikumar, Advocate sr.58265
+1cc to Mr.R.Sandeep Bagmar, Advocate sr.58266

T.C.A.No.440 of 2019

nmi(co)
nr 28/08/2019