IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.09.2019

CORAM :

THE HON'BLE DR.VINEET KOTHARI, ACTING CHIEF JUSTICE
AND
THE HON'BLE MR.JUSTICE C.SARAVANAN

Tax Case Appeal No.648 of 2019
and
C.M.P.No.18807 of 2019

Intimate Fashions (India) Private Limited,
Thiruporur Kottamedu High Road,
Nandhivaram Village,
Guduvanchery-603 202 ...Appellant

Vs.

Joint Commissioner of Income-tax,
Corporate Circle 2(2),
Nungambakkam, Chennai-600 034 .. Respondent

Tax Case Appeal filed under Section 260A of the Income Tax Act, 1961 against the order of the Income-Tax Appellate Tribunal 'D' Bench, Chennai, dated 21.06.2019, in S.P.No.200/Chny/2019, against the Joint Commissioner of Income Tax(OSA) corporate circle-2(2) Chennai-34, against the order of the Income Tax Appellate Tribunal “D”Bench, Chennai in PAN No.AAACI2706C.

For Appellant : Mr.Srinath Sridevan

For Respondent: Mr.Karthik Ranganathan

JUDGMENT
(Judgment of the Court was made by The Hon'ble Acting Chief Justice)

This appeal has been filed by the assessee aggrieved by the interlocutory order passed by the learned Income-Tax Appellate Tribunal 'D' Bench, Chennai, on 21.06.2019, for the Assessment Year 2009-10. By the said order, the learned Tribunal has rejected the stay application filed by the appellant/assessee before it. The appeal for the said Assessment Year 2009-10 is still pending before the Tribunal and hearing is said to be fixed on 31.12.2019.

2.The learned counsel for the Assessee Mr.Srinatha Sridevan has urged before us that even though for the previous Assessment Years 2001-02 to 2003-04, the Assessee had succeeded on the same issue, viz., dis-allowance of the commission paid by it to its Associate Enterprise M/s.Triumph International Overseas Limited, Liechtenstein, but without even noticing the said fact, the learned Tribunal has observed in the order that the issue relating to Arms Length Price Adjustment will require verification of various factual aspects, vide paragraph No.4 of its order but held that "therefore it cannot be said that the Assessee company is having prima facie case in its favour on merits".

3.The learned counsel, therefore, submitted that in view of the above self-contradictory observations of the learned Tribunal, in the facts of the case, the interim relief in favour of the Assessee ought to have been granted. The learned counsel also drew our attention to the fact that the Assessee Company has already paid a sum of Rs.75 lakhs as against the demand of Rs.1.84 Crores for the said Assessment Year 2009-10, as noted in the interim order passed by the coordinate Bench of this Court, on 29.08.2019, in the present appeal.

4.The learned counsel for the respondent Department Mr.Karthik Ranganathan, however, supported the impugned order.

5.Having heard the learned counsels for the parties, we are of the opinion that the present matter deserves to be remitted back to the learned Tribunal for passing a reasoned and a speaking order on the stay application filed by the Assessee. For arriving at the conclusion whether the Assessee has a prima facie case or not, at least, the case facts should have been discussed by the Tribunal in some detail. Whether such dis-allowance has been made for the earlier assessment years or not was a relevant fact, which appears to have escaped the notice of the Tribunal, though raised in the stay application filed before the learned Tribunal. Three relevant aspects should be always taken into consideration by all the Tribunals or civil Courts, while considering the stay applications, which are (I) existence of prima facie case (II) Irreparable injury aspect and (III) Balance of convenience. These are well settled and statutorily required para meters to be considered by dealing with stay applications.

6.The learned Tribunals or Civil Courts are bound to give their findings and reasons, even though tentative, with respect to the above three aspects of the matter while dealing with any stay applications before them.

7.The tenor of the order impugned before us does not meet these requirements. While holding that the Assessee has no prima facie case, the Tribunal has not even whispered about the facts of the case. A self conflicting observation has been made in Paragraph No.4 of the order, where, the Tribunal says that the making of the Arms Length Price Adjustment will require a factual verification by the fact finding body, viz., the Tribunal itself, while it hears the appeal finally, but the Assessee has no prima facie case.

8.Therefore, we allow the present appeal and set aside the impugned interlocutory order, dated 21.06.2019, passed by the Tribunal and request the learned Tribunal to hear the parties on the said stay application again and pass appropriate fresh order in the matter expeditiously, preferably, within a period of three months from today. The parties in the first instance, without any further notice from the Tribunal, may appear before the Tribunal on 03.10.2019. No costs. Connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//
Sub Assistant Registrar

msk
To:

1.Joint Commissioner of Income-tax,
Corporate Circle 2(2),
Nungambakkam, Chennai-600 034

2.The Income-Tax Appellate Tribunal 'D' Bench, Chennai

+1cc to Mr.Srinath Sridevan, Advocate SR.83305

Tax Case Appeal No.648 of 2019

RGN(CO)
CB(04/12/2019)