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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 11.03.2019

CORAM:

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

W.P.(MD)No.5379 of 2019
and W.M.P.(MD)No.4278 of 2019

M/s.Kings Infra Ventures Ltd.,
(Formerly "M/s. Victory Aqua Farm Ltd")
63-4301/431, near Kavalackal Temple,
Gandhi Nagar, Kadavanthra,
Kochi – 682 020, Representated by
Managing Director Shaji B.John ... Petitioner

Vs.

The Tax Recovery Officer-I,
Office of the Tax Recovery Officer-I,
No.2, V.P.Rathinasamy Nagar Road,
Bibikulam, Madurai. ... Respondent

PRAYER: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, calling for the records relating to the impugned proclamation of sale dated 20.02.2019 issued by the respondent in T.R.X.No.31/TRO-1/MDU/2018-19 and quash the same and consequently directing the respondent herein to defer all further proceedings of recovery till the outcome of the Application dated 04/03/2019 filed by the petitioner under Section 220(2A) of the Income Tax 1961.

For Petitioner : Mr.B.Dhanaraj
For Respondent : Mrs.S.Srimathy
Standing Counsel

ORDER

The instant Writ Petition has been filed challenging the proclamation of sale, dated 20.02.2019, issued by the respondent in T.R.X.No.31/TRO-1/MDU/2018-19 and consequently to direct the respondent to defer all further proceedings of recovery till the outcome of the application dated, 04.03.2019 filed by the petitioner, under Section 220(2A) of the Income Tax, 1961.

2. It is the case of the petitioner that, while they were doing Aqua culture business, there was some default in payment of tax for the assessment years 1992-1993, 1993-1994 and 1994-1995.

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Subsequently, the entire tax liability was paid in installments, between 05.02.2019 to 25.02.2019. It is their case that the tax could not be paid earlier, due to closure of Shrimp Farms, by order of the Hon'ble Supreme Court of India in the year 1996. Due to the default in payment of the tax for the assessment years 1992-1993, 1993-1994 and 1994-1995, the respondent has brought the petitioner's property being vacant plots of land measuring 126 acres 28 cents of land at Survey No.34, Pattanamardur Village, Ottapidaram Taluk, Thoothukudi District, for sale under Rule 38 and Rule 52(2) of the Second Schedule to the Income Tax Rules by a proclamation of sale, dated 20.02.2019, which is subject matter of challenge in this Writ Petition.

3. According to the petitioner the demand was made by the respondent to the petitioner for the payment of tax as well as interest only on 24.01.2019. It is also the case of the petitioner that the details of the tax, as well as the interest was furnished to the petitioner by the respondent only on 08.02.2019. According to the petitioner, immediately after the demand, dated 24.01.2019, a sum of Rs.10,00,000/- (Rupees Ten Lakhs Only) was paid by the petitioner on 05.02.2019 as advance towards tax on 05.02.2019. Thereafter, on the following dates, the following payments were made towards their tax liability.

Dates	Payment
16.02.2019	Rs.12,00,000/-
20.02.2019	Rs.10,39,122/-
22.02.2019	Rs.9.26,146/-
25.02.2019	Rs.12,13,048/-

In all put together, according to the petitioner, a sum of Rs.53,78,316/- was paid by the petitioner to the respondent wiping out the entire tax liability. According to the petitioner, the payments made by the petitioner towards tax liability are confirmed by the tax payer counter foils which are filed as documents, along with the instant writ petition.

4. According to the petitioner, after payment of the entire tax liability, the petitioner filed an application under Section 220 (2A) of the Income Tax Act on 05.03.2009, seeking waiver of interest before the Principal Commissioner of Income Tax, Trivandrum. According to the petitioner, till date the said application seeking for waiver of interest has not been considered by the Principal Commissioner of Income Tax, Trivandrum. But, without waiting for the outcome of the waiver of interest application, the respondent is proceeding with the sale of the petitioner's property as per the impugned proclamation of sale, dated 20.02.2019.

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5. In such circumstances, the instant writ petition has been filed challenging the proclamation of sale, dated 20.02.2019, issued by the respondent.

6. Heard Mr.B.Dhanaraj, learned counsel appearing for the petitioner and Mrs.S.Srimathy, learned Standing Counsel appearing for the respondent.

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7. The relevant portion of Section 220 (2A) of the Income Tax Act, 1961, reads as follows:

220. (1)...........

(2A).Notwithstanding anything contained in sub-section (2), the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner may reduce or waive the amount of interest paid or payable by the assessee under the said sub-section, if he is satisfied that-

(i) Payment of such amount has caused or would cause genuine hardship to the assessee;

(ii) Default in the payment of the amount on which the interest has been paid or was payable under the said sub-section was due to circumstances beyond the control of the assessee; and

(iii) The assessee has co-operated in any enquiry relating to the assessment or any proceeding for the recovery of any amount due from him.

[Provided that the order accepting or rejecting the application of the assessee, either in full or in part, shall be passed within a period of twelve months from the end of the month in which the application is received:

Provided further that no order rejecting the application, either in full or in part, shall be passed unless the assessee has been given an opportunity of being heard:

Provided also that where any application is pending as on the first day of June 2016, the order shall be passed on or before 31st day of May, 2017.]

8. As evident from the records place before this Court, it is clear that the petitioner has paid the entire tax liability of Rs.53,78,316/-. The only point for consideration is whether the petitioner is liable to pay a sum of Rs.1,32,93,493/- as interest as per the respondent's demand letter, dated 08.02.2019.

9. According to the petitioner's company, they are entitled for waiver in view of the closure of their business pursuant to orders passed by the Hon'ble Supreme Court as well as due to the appeal filed by the Department in respect of depreciation.

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10. The Discretionary power for waiver of interest is available to the Principal Commissioner of Income Tax under Section 220 (2A) of the Income Tax Act, 1961. The petitioner has submitted an application before the Principal Commissioner of Income Tax, Trivandrum, seeking waiver of interest on 05.03.2019. On receipt of the application under Section 220 (2A) of the Income Tax Act, 1961, the Principal Commissioner of Income Tax, Trivandrum, has also forwarded to the Principal Commissioner of Income Tax, Cochin for consideration.

11. In the instant case, the tax liability as per the respondent's demand is Rs.53,78,316/-, which has already been duly paid by the petitioner. Whereas the interest component is an exorbitant figure of Rs.1,32,93,493/-. Considering the exorbitant interest demanded by the respondent, before the first respondent, this Court is of the considered view that before passing any final order in the application filed by the petitioner, under Section 220 (2A) of the Income Tax Act, 1961, the properties belonging to the petitioner as per proclamation of sale, dated 20.02.2019, issued by the respondent cannot be brought for sale as it will violate the principles of natural justice. The purpose of a statutory power given to any assessee to seek waiver of interest will be defeated, if the respondent is allowed to bring the property for sale, even before the outcome of the proceedings under Section 220 (2A) of the Income Tax Act, 1961 and it will defeat the objects of Section 220 (2A) of the Income Tax.

12. For the foregoing reasons, this Court quashes the impugned proclamation of sale, dated 20.02.2019 issued by the respondent in T.R.X.No.31/TRO-1/MDU/2018-19. However, this Court directs the Principal Commissioner of Income Tax-I, Cochin, to dispose of the application dated 04.03.2019 filed by the petitioner on 05.03.2019 under Section 220(2A) of the Income Tax Act, 1961, before the Principal Commissioner of Income Tax, Trivandrum, vide reference C.No.343/J/PCIT/TVPM/WI-8/2018-19/1488, within a period of six months, from the date of receipt of a copy of this order.

13. With the aforesaid direction, this Writ Petition is disposed of. Consequently, connected Miscellaneous Petition is closed.

14. After passing the order, the learned Counsel for the respondent would submit that the respondent has already incurred expenses towards sale of the properties as per the proclamation, dated 20.02.2019 for which the respondent will have to be reimbursed.

15. Considering the large extent of the property, this Court directs the petitioner to pay a sum of Rs.50,000/- towards reimbursement of the expenses of the sale to the respondent, within

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a period of one week from the date of receipt of a copy of this order.

Sd/-
Assistant Registrar(Crl.Side)

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Sub Assistant Registrar

1.The Tax Recovery Officer-I,
Office of the Tax Recovery Officer-I,
No.2, V.P.Rathinasamy Nagar Road,
Bibikulam, Madurai.

2.The Principal Commissioner of Income Tax,
Trivandrum.

3.The Principal Commissioner of Income Tax-I,
Kochi.

+1cc to Mr.B.Dhanaraj, Advocate, SR.No.53216
+1cc to Mr.S.Srimathy,Advocate, SR.No.53003

W.P.(MD)No.5379 of 2019
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SP/13.03.2019/ 5P/6C

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