BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 10.10.2019
CORAM:
THE HON'BLE MR. JUSTICE R. MAHADEVAN
AND
THE HON'BLE MR. JUSTICE S.S. SUNDAR

W.P.(MD).Nos.21537, 21538 and 21540 to 21544 of 2019 and WMP(MD).Nos.18198, 18199, 18201 to 18203, 18206, 18204, 18205, 18207, 18208, 18210, 18209, 18211, 18213, 18212, 18214, 18215 to 18218 of 2019 in W.P.(MD).Nos.21537, 21538 and 21540 to 21544 of 2019

M/s. V.V.V & Sons Edible Oils Limited,
rep. by its Director M. Rajiv Vignesh,
443, Main Bazaar,
Virudhunagar - 626 001. : Petitioner in all W.Ps.

Vs.

1.The Assistant Commissioner of Income Tax
Central Circle -1,
Room.No.4, Income Tax Staff Quarters Complex,
Kulamangalam Main Road,
Meenambalpuram, Madurai - 625 002.

2.The Secretary,
Income Tax Appellate Tribunal,
Rajaji Bhavan, Beasant Nagar,
Chennai. ...Respondents in all W.Ps.

COMMON PRAYER : These Writ Petitions have been filed under Article 226 of the Constitution of India to issue a Writ of Certiorari to call for the records of the second respondent in his proceedings in S.P.Nos.252, 253, 257, 255, 254, 256 and 258 /CHNY/2019 in ITA No.2275, 2276, 2280, 2278, 2277, 2279 and 2281 /CHNY/2019 respectively, quash the impugned proceedings, dated 30.09.2019.

For petitioner in all W.Ps. : Mr. R.L. Ramani
Senior Counsel
for M/s. Raja Jeyachandra Paul

For 1st respondent in all W.Ps. : Mrs. S. Srimathi
Standing Counsel

COMMON ORDER

[Order of the Court was made by **R. MAHADEVAN, J.**]

Challenge in this batch of writ petitions is to the common order dated 30.09.2019 passed by the second respondent (ITAT) in Stay Petition Nos.252, 253, 254, 255, 256, 257 and 258/CHNY/2019 in

ITA Nos.2275, 2276, 2277, 2278, 2279, 2280 and 2281/CHNY/2019 relating to the Assessment Years from 2010-11 to 2016-17.

2.Since the facts and issues involved in these writ petitions are identical and are intertwined, the same were heard together and are decided by this common order.

3.The succinctly stated facts of the case are as follows:

3.1 The petitioner, which was originally a partnership firm and now, converted into a limited company, is engaged in the business of manufacture and sale of gingelly oil, groundnut oil, oil cakes and sesame seeds, etc.

3.2 According to the petitioner, prior to conversion, the assets of the partnership firm were revalued. Since the firm was the holder of the brand names “Idhayam”, “Mantra” and other brands, value was assigned to the brands owned by the partnership firm and the assets that were valued and revalued were credited to the partners' accounts in proportion to their shares in the firm. The brand value, being an asset to the petitioner firm, the petitioner claimed depreciation on the same from the Assessment Year 2012-13 onwards.

3.3 While so, a search was conducted on 17.11.2015 in the business premises of the petitioner firm. Pursuant to the same, notice under Section 153A(a) of the Income Tax Act, 1961 (hereinafter shortly referred to as “the Act”) was served on the petitioner on 29.12.2016 for the assessment years from 2010-11 to 2015-16. The petitioner filed its return for each assessment year. Subsequently, notices under Section 143(2) and 142(2) of the Act were issued, to which, the petitioner submitted its replies and produced the required details. In the mean while, notice under Section 143(2) and 142(1) for the assessment year 2016-17 was also issued, to which, the petitioner filed its reply along with relevant details.

3.4 After scrutinising the same, the first respondent passed assessment orders dated 31.12.2017 for the assessment years from 2010-11 to 2016-17. The first respondent, while granting deduction towards depreciation on goodwill for the assessment years 2010-11 and 2011-12, has disallowed depreciation claimed on brand value by the petitioner, in respect of the assessment years 2012-13 to 2016-17 stating that no cost has been incurred to acquire brand value. Apart from the same, the first respondent has made disallowances towards construction of school building, dividend under Section 14A of the Act, foreign tour expenses and also additions towards alleged transfer of profit to sister concern.

3.5 Challenging the assessment orders so passed by the first respondent, the petitioner filed statutory appeals before the

Commissioner of Income Tax (Appeals) 19, Chennai and the same were numbered as ITA Nos.311 to 315/17-18, which were dismissed vide order dated 28.5.2019. Aggrieved over the same, the petitioner preferred further appeal before the second respondent (ITAT) on 09.08.2019. They also filed stay petitions seeking to stay the recovery of the alleged arrears of tax for the assessment years from 2012-13 to 2016-17.

3.6 Pending the aforesaid stay petitions, the first respondent has taken steps to attach the bank accounts of the petitioner, which compelled the petitioner to move an application, in the course of hearing of which, the petitioner has given an undertaking to remit a sum of Rs.2.25 crores in three equal instalments and also paid the first instalment of Rs.75 lakhs on 09.09.2019.

3.7 Subsequently, the stay petitions viz., SP Nos.252 to 258/CHNY/2019 were taken up for hearing and were dismissed vide order dated 30.09.2019 on the ground that the issue involved is covered against the assessee vide the earlier judgment passed by a co-ordinate Bench of the Tribunal in RMKV Fabrics v. DCIT [ITA No.614/CHNY/2018 decided on 30.04.2019]. Feeling aggrieved, the petitioner has come up with the instant petitions.

4.According to the learned Senior Counsel for the petitioner, the brand value being an intangible asset to the petitioner firm, the petitioner claimed depreciation on the same from the assessment year 2012-13 onwards in accordance with the provisions of the Act and also in the light of the judgment of the Supreme Court in CIT v. Smifs Securities Ltd [348 ITR 302]; however, without considering the same in a proper perspective, the first respondent has passed assessment orders disallowing the depreciation, which was also confirmed by the Appellate Authority. The learned Senior Counsel further submitted that without examining the other aspects, the second respondent (ITAT) has erred in dismissing the stay applications, referring to the earlier judgment passed by a co-ordinate Bench of the Tribunal in RMKV Fabrics v. DCIT (cited supra), which has not attained finality, as the appeal filed thereagainst, is pending consideration before this Court. Apart from that, the learned Senior Counsel, on instructions, submitted that the petitioner has already paid a sum of Rs.5,81,05,465/- (Rs.4,31,05,465/- representing 20% of the disputed tax, during the pendency of the appeal before the Appellate Authority, the first instalment of Rs.75 lakhs on 09.09.2019 and the second instalment of Rs.75 lakhs on 05.10.2019); in addition to the same, the petitioner is now inclined to pay a sum of Rs.2 crores along with the third instalment sum of Rs.75 lakhs. Hence, the learned Senior Counsel submitted that since the petitioner has made a substantial payment, this Court may direct the Tribunal to take up the main appeals itself for final disposal and to grant stay of recovery in the mean while.

5.Heard the learned Standing Counsel taking notice for the first respondent, who made her submissions supporting the orders passed by the respondent authorities.

6.After having heard both sides and upon perusal of the documents filed in the form of typed set of papers, it could be seen that without adducing any reason, the second respondent (ITAT) has passed the order impugned herein, that too without extracting the relevant portion of the earlier judgment of the co-ordinate Bench of the Tribunal in RMKV Fabrics v. DCIT (cited supra). Though the Tribunal is empowered to pass any order in the stay applications, it has to consider each and every issue independently and render its findings with proper reasonings, since reasoning is the heartbeat of every conclusion. Without following this rudimentary principle of law, the second respondent has passed the impugned order, merely referring to the case number of the earlier judgment of the co-ordinate Bench of the Tribunal. Such course adopted by the Tribunal, in the opinion of this Court, cannot be countenanced.

7.In such view of the matter and also in the light of the admitted facts that the petitioner has already paid a substantial amount and is also inclined to pay a further sum of Rs.2 crores in addition to the third instalment of Rs.75,00,000/-, this Court, without expressing any opinion on the merits of the grounds raised by the petitioner in the stay applications as it is tantamount to dealing with the legal issues involved in the main appeals, holds as under:

(i)the order dated 30.09.2019 passed by the second respondent (ITAT) is set aside, subject to payment of Rs.2 crores + Rs.75 lakhs by the petitioner, within a period of four weeks from the date of receipt of a copy of this order.

(ii)On such payment, the second respondent (ITAT) shall take up the main appeals viz., ITA Nos.2275, 2276, 2277, 2278, 2279, 2280 and 2281/CHNY/2019 and dispose of the same, on merits and in accordance with law, after affording due opportunity of personal hearing to all the parties, within a period of eight weeks thereafter.

(iii)Till the disposal of the main appeals by the second respondent (ITAT), there shall be an order of interim stay in respect of recovery.

8.All the writ petitions stand disposed of in the above terms. No costs. Connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar

// True Copy //

Sub Assistant Registrar(CS)

trp/rsb

To

1.The Assistant Commissioner of Income Tax
Central Circle -1,
Room.No.4, Income Tax Staff Quarters Complex,
Kulamangalam Main Road,
Meenambalpuram,
Madurai – 625 002.

2.The Secretary,
Income Tax Appellate Tribunal,
Rajaji Bhavan, Beasant Nagar,
Chennai.

+1 CC to M/s.S.M.SJOHNNY BASHA, Advocate (SR-91699[F] dated 10/10/2019)

+1 CC to M/s.S.RAJA JEYA CHANDRA PAUL, Advocate (SR-91689[F] dated 10/10/2019)

W.P.(MD).Nos.21537, 21538 and 21540 to 21544 of 2019 and WMP(MD).Nos.18198, 18199, 18201 to 18203, 18206, 18208, 18210, 18209, 18211, 18213, 18212, 18214, 18215 to 18218 of 2019 in W.P.(MD).Nos.21537, 21538 and 21540 to 21544 of 2019

10.10.2019

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