THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO
And
THE HONOURABLE SRI JUSTICE K. LAKSHMAN

WRIT PETITION No.24602 of 2019

ORDER: *(Per Hon'ble Sri Justice M.S. Ramachandra Rao)*

Heard Sri S.Niranjan Reddy, learned Senior Counsel for Sri Rohit Pogula, learned counsel for petitioner and Sri B. Narasimha Sarma, learned counsel for Sri K.Raji Reddy, learned Senior Standing Counsel for respondent Nos.1 and 2.

2. In this Writ Petition, notice bearing F.No.DCIT 14(1)/ AABCC7343L/2019-20 dt.28-10-2019 issued under Section 226(3) of the Income Tax Act, 1961 (for short 'the Act') is challenged wherein it is stated that a sum of Rs.11,21,08,090/- is due from the assessee / predecessor of petitioner to 1st respondent, and the 3rd respondent, who is the Banker of the Assessee, was directed to withhold the said amount available in the mentioned account number of the assessee.

3. Learned counsel for petitioner contends that during the 2014-15 financial year, a sale was effected by the assessee of its undertaking to a third party; that the assessee came to be amalgamated with the petitioner w.e.f. 17-08-2018 during the financial year 2017-18 under a scheme of arrangement sanctioned by the National Company Law Tribunal, New Delhi Bench dt.23-08-2019; and therefore the assessee SPI Cinemas Private Limited ceases to exist.

4. It is contended that in the assessment order passed by the 1st respondent under Section 143(3) of the Act, the income of the petitioner was taken as Rs.33,90,88,870/- and a tax demand of Rs.7,22,00,750/- was raised; that petitioner then filed an appeal under Section 246-A of the Act before the Commissioner of Income Tax Act (Appeals) (CIT) by remitting 20% of the demand raised and intimated to the 1st respondent; that the said appeal was dismissed by the CIT on 21-08-2018; and thereafter 1st respondent issued a notice dt.14-11-2018 stating that the balance due of Rs.5,77,60,600/- has not been paid by petitioner and demanding payment of the same.

5. It is contended that petitioner then filed an appeal and an application seeking stay of demand raised by 1st respondent before the Income Tax Appellate Tribunal, Hyderabad (ITAT) on 22-02-2019; that the said stay application was dismissed on the ground that the petitioner did not approach the CIT for grant of stay of recovery; petitioner then filed an application seeking stay before the 2nd respondent on 26-02-2019, but the same has not been disposed of by 2nd respondent; and in the meantime, the impugned notice dt.28.10.2019 under Section 226(3) of the Act was issued to the 3rd respondent; and thus it had frozen the sum of Rs.11,21,08,090/- available in the account mentioned therein of the assessee.

6. Learned counsel for petitioner contends that failure of the 2nd respondent to decide the stay application for such a long time is

arbitrary, illegal and no valid reason has been assigned by respondent nos.1 and 2 for not disposing of the said stay application.

7. Sri B.Narasimha Sarma, learned counsel for Sri K.Raji Reddy, learned Senior Standing Counsel appearing for respondent Nos.1 and 2 seeks to contend that the order of assessment having been confirmed by the CIT (Appeals), the petitioner ought to pay the same when there is no stay of recovery granted by the 2nd respondent. But he did not dispute about the pedency of stay application filed by petitioner before the 2nd respondent since 26-02-2019.

8. Admittedly more than 8 months have elapsed since filing of stay application by the petitioner before the 2nd respondent seeking stay of recovery of amount demanded by 1st respondent in his notice dt.14-11-2018 and it was incumbent on the part of 2nd respondent to expeditiously dispose of the stay application within a reasonable time.

9. It is not open to the 2nd respondent to keep silent and allow the 1st respondent to effect recovery rendering the appeal infructuous.

10. Therefore, the impugned notice dt.28-10-2019 is set aside; and the 2nd respondent is directed to decide the stay application filed on 26.02.2019 by petitioner before him within one week from the date of receipt of a copy of this order after giving notice of hearing to the petitioner.

11. The Writ Petition is allowed with the above directions. No costs.

12. Consequently, miscellaneous petitions pending, if any, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

JUSTICE K. LAKSHMAN

Date: 11-11-2019

Note :- Issue C.C. by 12-11-2019.
B/o.
Vsv