IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO.228 OF 2020

Teleperformance BPO Holdings Pvt. Ltd. … Petitioner
Vs.
Assistant Commissioner of Income Tax, Central Circle 12(2)(2) and others … Respondents

Mr. J. D. Mistry, Senior Advocate i/b. Mr. Madhur Agarwal and Mr. A. K. Jasani for Petitioner.
Mr. Sham Walve a/w. Mr. Pritesh Chatterjee for Respondent Nos.1 to 3.

CORAM : UJJAL BHUYAN &
MILIND N. JADHAV, JJ.

DATE : JANUARY 24, 2020

P.C. :

Heard Mr. Mistry, learned senior counsel assisted by Mr. Agarwal, learned counsel for the petitioner and Mr. Walve, learned standing counsel Revenue for respondent Nos.1 to 3.

2. By filing this Petition under Article 226 of the Constitution of India, petitioner seeks quashing of the notice of demand under Section 156 of the Income Tax Act, 1961 (briefly "the Act" hereinafter) issued by the Assistant Commissioner of Income Tax, Circle 12(2)(2), Mumbai dated 27.12.2018 as well as the consequential garnishee notices and individual recovery notices issued to the directors of the petitioner under Section 179 of the Act.

3. For the purpose of adjudication of the instant writ petition, it may not be necessary to delve into the factual controversy in detail. Suffice it say that in the assessment proceeding for the assessment year 2016-17, the assessee had added back to its total income its investment in Intelenet Global Services Pvt. Ltd. as a non-deductible expenditure. However, the Assessing Officer invoked Sections 60 and 63 of the Act

and worked out a figure of Rs.496,25,40,000.00 as the fair market value of the shares, taxable as income of the assessee under the head of "income from other resources". Thus, vide the assessment order dated 27.12.2018, an amount of Rs.496,25,40,000.00 was rounded off as the taxable income of the petitioner.

4. This was followed by the notice of demand under Section 156 of the Act dated 27.12.2018 whereby petitioner was informed that a sum of Rs.2,28,44,52,663.00 is payable as income tax.

5. It is stated that against the aforesaid assessment order dated 27.12.2018, petitioner has preferred appeal under Section 246-A of the Act before the Commissioner of Income Tax (Appeals) - 20, Mumbai on 23.01.2019.

6. Mr. Mistry has submitted that in the appeal proceeding, petitioner has submitted written arguments.

7. Parallely petitioner approached the administrative Commissioner i.e. Principal Commissioner of Income Tax-12, Mumbai for stay of the demand.

8. Mr. Mistry has also submitted that petitioner has made payment of Rs.25 crore as part of the demand. However, on a query by the Court, he submits that such payment is under protest. Petitioner has made detailed written submissions for stay of the demand. It is stated that a notice dated 08.11.2019 was issued by the office of the Principal Commissioner to the petitioner for hearing on 14.11.2019 but the said notice was received by the petitioner only on 23.11.2019. Therefore, authorized representative of the petitioner could not appear for the hearing on 14.11.2019 but subsequently appeared on 26.11.2019 and made oral submissions. However, no order has been passed on the stay prayer. While stay application was pending, notices dated 03.01.2020 under Section 226(3) of the Act were issued to Kotak Mahindra Mutual Fund

and to the debtors of the petitioner. In addition, notices under Section 179 of the Act dated 01.01.2020 were issued to the individual directors of the petitioner for recovery of the amount covered by the notice of demand. It is at this stage that the present writ petition has been filed.

9. Mr. Mistry submits that the demand itself is untenable in law. Petitioner has a good *prima facie* case and has also demonstrated its financial hardship because of which it is not possible on the part of the petitioner to satisfy the demand. But the basic crux of the argument of Mr. Mistry is that when the stay application is pending and without taking any decision on the stay application, it was not justified on the part of the revenue authorities in issuing the impugned notices. He has also placed reliance on a decision of this Court in *UTI Mutual Fund Vs. Income Tax Officer*, (2012) 345 ITR 71 to contend that a revenue authority dealing with a prayer for stay is required to exercise its jurisdiction having regard to the parameters laid down in the said judgment.

10. On the other hand, Mr. Walve submits that a speaking order has been passed by the Assessing Officer on 20.09.2019 rejecting the prayer for stay of the demand. It was thereafter that the impugned notices have been issued.

11. In reply Mr. Mistry submits that rejection of stay prayer by the Assessing Officer when the same is pending before the higher authority is neither here nor there; it makes no material difference at all to the situation.

12. Submissions made by learned counsel for the parties have been considered. Also perused the materials on record.

13. After hearing learned counsel for the parties and on due consideration, Court is of the view that when the petitioner has filed the

statutory appeal against the order of assessment and has also parallely filed an application for stay before the administrative Commissioner; without taking a decision either on the appeal or on the prayer for stay, it was not justified on the part of the revenue authority in issuing the impugned notices. In the circumstances, rejection of the prayer for stay by the Assessing Officer when the appeal is pending before the first appellate authority and the stay prayer is pending before the administrative Commissioner, in our view, would not be of much consequence. Therefore, taking an overall view of the matter, we feel that the appeal filed by the petitioner under Section 246-A of the Act, which has been registered as CIT (A)-20.Mumbai/10324/2018-19 should be heard and decided by the first appellate authority in accordance with law within a period of four weeks from the date of receipt of an authenticated copy of this order. Ordered accordingly. During this period of four weeks, the impugned notices under Section 179 as well as under Section 226(3) of the Act shall remain in abeyance. Petitioner shall fully co-operate with the appellate authority while hearing the appeal.

14. Needless to say we have not expressed any opinion on merit and all contentions are kept open.

15. It is also made clear that if the appeal order goes against the petitioner, the same shall be kept in abeyance for a further period of two weeks from the date of receipt of the order to enable the petitioner to avail the statutory remedy as provided under the Act.

16. Writ Petition is disposed of.

(MILIND N. JADHAV, J.) **(UJJAL BHUYAN, J.)**

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