IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.728 OF 2020

Play Games 24 x 7 Private Limited, Mumbai. ... Petitioner
V/s.
Assistant Commissioner of Income-tax
- 13(1)(2), Mumbai and ors. ... Respondents

Mr.J.D.Mistri, Senior Advocate with Mr.Atul K. Jasani, Advocate for the Petitioner.
Mr.Akhileshwar Sharma, Advocate for Respondents.

CORAM : UJJAL BHUYAN &
MILIND N. JADHAV, JJ.
DATE : MARCH 13, 2020

P.C.:-

1. Heard Mr.J.D.Mistri, learned senior counsel for the petitioner; and Mr.Akhileshwar Sharma, learned standing counsel, Revenue for the respondents.

2. By filing this petition under Article 226 of the Constitution of India, petitioner seeks quashing of orders dated 12th February, 2020 passed by respondent No.1 rejecting the application for stay of demand of the petitioner as well as order dated 21st February, 2020 passed by respondent No.2 also rejecting the application for stay of the petitioner and further seeking a stay of recovery of demand by the respondents till disposal of the appeal filed by the petitioner before the Commissioner of Income Tax (Appeals) against the order of assessment.

3. Shorn of details, it may be mentioned that respondent No.1 as the Assessing Officer passed assessment order dated 28th December, 2019 in respect of the petitioner for the assessment year 2014-15 under Section 143(3) r/w Section 263 of the Income Tax Act, 1961 (briefly "the Act" hereinafter).

4. Petitioner is a company assessed to income tax under the jurisdiction of respondent No.1. It is engaged in the business of providing platform for online and mobile games. In the assessment order, respondent No.1 held that petitioner had failed to bring on record the compliance of tax deducted at source under Section 194B of the Act and therefore applied the provisions of Section 40(a)(ia) of the Act. Respondent No.1 added 30% of the winning payout of Rs.6,20,80,70,600.00 towards winning from lottery or crossword puzzles and non-deduction of TDS which works out to Rs.1,86,24,21,180.00, to the total income of the assessee under Section 40(a)(ia) of the Act. This was followed by issuance of notice of demand of even date under Section 156 of the Act calling upon the petitioner to pay a sum of Rs.1,11,50,90,540.00 as the amount of tax due for the assessment year 2014-15.

5. Aggrieved by the order of assessment, petitioner preferred appeal before the Commissioner of Income Tax (Appeals)-21, Mumbai, also referred to as the first appellate authority, on 22nd January, 2020 bearing acknowledgment No.294727091220120.

6. Simultaneously, petitioner also filed an application before respondent No.1 on 23rd January, 2020 seeking stay of demand under Section 220(6) of the Act. By order dated 12th February, 2020, respondent No.1 rejected the application for stay of demand, granting liberty to the petitioner to pay 20% of the total demand within 3 days in which event it was stated that the outstanding demand would be stayed.

7. Being aggrieved, petitioner preferred further stay petition dated 14th February, 2020 before respondent No.2. By order dated 21st February, 2020, respondent No.2 directed the petitioner to pay atleast 5% of the total outstanding demand as per the schedule mentioned therein subject to which it was stated that the demand would be stayed.

8. Aggrieved, present writ petition has been filed.

9. Mr.Mistri, learned senior counsel has referred to Section 194B of the Act and submits that petitioner is only providing a platform for playing of card games by the users. In terms of Section 194B of the Act, petitioner has been deducting income tax at the prescribed rate for every game where the winnings exceed Rs.10,000.00. Other than that, petitioner has nothing to do with the card games played on its platform. Its earning is only by way of commission earned on the games. He has also referred to the provisions contained in Section 40(a)(ia) of the Act to contend that while computing the income chargeable under the head "profits and gains of

business or profession", 30% of any sum payable by an assessee to a resident on which tax is deductable at source and such tax has not been deducted or after deduction has not been paid, shall not be deducted. He submits that considering the nature of business carried on by the petitioner question of applicability of Section 40(a)(ia) does not arise. Taking exception to the way in which respondent Nos.1 and 2 have dealt with the stay application of the petitioner, Mr.Mistri has placed reliance on the decision of this court in **UTI Mutual Fund Vs. Income Tax Officer, 345 ITR 71,** in which this court laid down certain guidelines for the revenue authorities to be borne in mind while dealing with stay application. Referring to guideline No.3, he submits that in so far the previous assessment years of the petitioner are concerned, provisions of Section 40(a)(ia) of the Act were never applied to the petitioner. He therefore, submits that as per guideline No.3 if the Assessing Officer has taken a view contrary to what has been held in the preceding previous years without there being a material change in facts or law, that will be a relevant consideration in deciding the application for stay. This aspect of the matter was completely overlooked by respondent Nos.1 and 2 while dealing with the stay application of the petitioner.

10. On the other hand, Mr.Sharma, learned standing counsel, Revenue submits that respondent No.2 has fairly considered the stay application of the petitioner and against the total outstanding demand he has directed petitioner to pay only 5% of the demand that too in three installments. That apart,

petitioner has already moved the first appellate authority in appeal. It is open to the petitioner to pray for stay before the appellate authority. In the circumstances, question of interference by the court does not arise.

11. Submissions made by learned counsel for the parties have been considered.

12. At the outset, it may be mentioned that petitioner has already paid Rs.1,11,50,905.00 as part of the outstanding dues, ofcourse without prejudice to its rights and contentions.

13. Without expressing any opinion on merit, we feel that it would be in the interest of justice if the first appellate authority hears the appeal filed by the petitioner and decides the same in accordance with law within a period of four months from the date of receipt of an authenticated copy of the order.

14. Ordered accordingly.

15. Till decision is rendered on the appeal of the petitioner by the first appellate authority within the period specified, there shall be stay of the demand notice issued pursuant to the assessment order dated 28th December, 2019.

16. Petition is disposed of.

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

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